Vol. 1.

# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. ~~780~~ 481

CALVIN AMORY STEVENS AND JOHN T. TERRY

*Appellants.*

*vs.*

THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED NOVEMBER 16, 1881.

# UNITED STATES SUPREME COURT.

**No. 782.**

CALVIN AMORY STEVENS AND JOHN T. TERRY, ON BEHALF OF THE HOLDERS OF INTERNAL IMPROVEMENT BONDS OF THE STATE OF TENNESSEE, ISSUED TO THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY,

*vs.*

THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY.

## TRANSCRIPT OF RECORD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, SIXTH JUDICIAL CIRCUIT, EASTERN DISTRICT OF TENNESSEE.

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# United States Circuit Court,

**Sixth Judicial Circuit, Western District of Tennessee.**

**IN EQUITY.**

*Calvin Amory Stevens, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the Mississippi and Tennessee Railroad Company,*

*versus*

*The Mississippi and Tennessee Railroad Company.*

## BILL FOR RELIEF.

E. L. ANDREWS and
GEORGE HOADLY,
*Solicitors, and of Counsel for Complainant.*

# United States Circuit Court,

**Sixth Judicial Circuit, Western District of Tennessee.**

## IN EQUITY.

*To the Honorable, the Judges of the Circuit Court of the United States for the Sixth Judicial Circuit and Western District of Tennessee.*

Your orator, Calvin Amory Stevens, who is a citizen of the State of New York, brings this, his bill of complaint, against the Mississippi and Tennessee Railroad Company, which is a citizen of the State of Tennessee, and is a corporation organized, existing, and transacting business in said State by virtue of, and under, an act of the General Assembly of said State.

And thereupon your orator, complaining, shows unto your Honors that he brings this bill of complaint, as well on behalf of all other holders of the Internal Improvement bonds loaned by the State of Tennessee to the Mississippi and Tennessee Railroad Company, who may join in the prosecution and contribute to the expenses of this litigation, as on his own behalf as a holder of said bonds.

Your orator shows that the Mississippi and Tennessee

Railroad Company is a body, politic and corporate, chartered by acts of the General Assemblies of the States of Mississippi and Tennessee. The object and purpose of the creation of said corporation, by the said several charters, was the construction, completion, and, thereafter the operation and management of a line of railway for the transportation of passengers and freight from the city of Memphis, in the State of Tennessee, through the territory of the State of Tennessee, to the city of Grenada, in the State of Mississippi.

For this purpose powers were granted to said corporation, as are declared in the several charters and acts of incorporation. The said corporation was authorized to borrow money for the purposes of the enterprise. It was likewise authorized to impose liens and execute mortgages upon its property to provide for, and insure the payment of, its liabilities.

Your orator makes part of this, his bill of complaint, the said several charters and acts, with their several amendments, passed by the legislature of Tennessee, and attaches copies thereof, marked Exhibit A.

Your orator shows that the General Assembly of the State of Tennessee, by an act, passed the 11th of February, in the year 1852, determined to lend to the railroad companies within its limits, and specified in said act, the aid of its credit, for the completion of their several lines of railway.

The plan of that legislation was that each railroad company should procure a certain amount of *bona fide* subscriptions for its capital stock, and that it should have graded, bridged, and ready for the reception of rails, a certain number of miles of its road. By means of these preliminary requirements, assurance was obtained that each railroad company would be competent to fulfill the obligations it was to incur under the statute hereinafter set forth. The period of four years was allowed for the completion of each section of a road. The act proceeds to authorize

and give validity to bonds of the State, which the governor was required to issue to each company. The amounts of the bonds were to be ascertained by the length of each railroad within the State, and the proceeds of the bonds were to be exclusively applied to the payment of the railroad iron, and equipments of the road to which they were loaned. The president of each railroad company, assisted by a commissioner appointed by the governor, was to negotiate the sale of the bonds loaned to his company. The act was made a public law for all purposes of notice, and a system of numbering was adopted for distinguishing each bond, and identifying the company to which it was issued. The tenor of the act which gave existence to the bonds, was, that each company become liable upon, and bound to perform, the obligations contained in, and represented by, the bonds loaned to it. Each company was to pay, from its own means, the interest upon the bonds loaned to it, as the same matured from time to time, and also to pay and discharge the principal debt, as it was expressed upon said bonds, when the same matured.

Your orator shows that the sale of the said bonds was to be the means of raising the money requisite for completing the superstructure, laying the rails, and providing the equipment of the roads. The bonds loaned to each company were to be payable in such places in the United States as its president might designate. In order to insure the said sale, and make a market for said bonds, and to create confidence in the public, and on the part of persons to whom said bonds might be offered for sale, and who might become the purchasers of the same, that each company would punctually pay the principal and interest of the bonds loaned to it, or, in case of its failure, that ample security should be provided therefor, which might be easily realized, it was provided by the statute, that "so soon as the bonds of the State shall have been issued for the first section of the road, they shall constitute a lien upon said section, without a deed from the company," and the "State of Ten-

nessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien or mortgage, without a deed from the company for the payment by said company of said bonds, with the interest thereon, as the same becomes due, and with a like mortgage or lien, without a deed from the company, upon the additional sections, and upon the entire road, including the stock, for the payment of all of the bonds issued to the company, and for the interest accruing thereon." This statutory lien was to be operative at once, and without conveyance or assurance of any kind from the corporations, and was to be superior to all other liens, upon the entire road and property of any corporation so receiving such public assistance, in the State of Tennessee. The statute was to be a substitute for a mortgage executed by each railroad company, for the purposes named in the act.

By the terms of an act of the same session provision was made for a public and official record of the issues of bonds to the several roads.

The Comptroller of the State was required to sign and number the coupons of the bonds issued to each railroad, and the Secretary of State was required to number and countersign the bonds; and upon delivering bonds to the several companies, the Secretary of State was required to take a receipt, reciting the number, date, and amount of the bonds so delivered. These receipts were to be taken in a well-bound book, to be deposited in the office of the Secretary of State.

The General Improvement law, above referred to, is herewith set out fully and at length, to wit:

AN ACT to Establish a System of Internal Improvements in this State.

SECTION I. *Be it enacted by the General Assembly of the State of Tennessee*, That whenever the East Tennessee and Virginia Railroad Company shall

have procured *bona fide* subscriptions for the capital stock in said company to an amount sufficient to grade, bridge, and prepare for the iron rails the whole extent of the main trunk line proposed to be constructed by said company, and it shall be shown by said company to the Governor of the State that said subscriptions are good and solvent, and whenever said company shall have graded, bridged, and shall have ready to put down the necessary timbers for the reception of rails, and fully prepared a section of thirty miles of said road at either terminus, in a good and substantial manner, with good materials, for putting on the iron rails and equipments, and the Governor shall be notified of these facts, and that section, or any part thereof, is not subject to any lien whatever, other than those created in favor of the State by the acts of 1851–2, by the written affidavit of the Chief Engineers and President of said company, together with the written affidavit of a competent engineer by him appointed, at the cost of the company, to examine said section, then said Governor shall issue *to said company* coupon bonds of the State of Tennessee, to an amount not exceeding eight thousand dollars per mile on said section, and on no other condition, *which bonds shall be payable at such place in the United States as the President of the Company may designate*, bearing an interest of six per centum per annum, payable semi-annually, and not having more than forty nor less than thirty years to mature.

SEC. 2. *Be it enacted*, That the bonds before specified shall not be used by said company for any other purpose than for procuring the iron rails, chairs, spikes, and equipments for said section of said road, and for putting down said iron rails, and the Governor shall not issue the same unless upon the affidavit of said President, and a resolution of a majority of the Board of Directors, for the time being, that said bonds shall not be used for any other purpose than for procuring the said iron rails, chairs, spikes, and equipments for said section, and for putting down said iron rails, and the Governor shall have power to appoint a commissioner to act under oath, in conjunction with said President, in negotiating said bonds for the purposes aforesaid, and to

act in any other matters pertaining to said company, where the interest of the State, in the opinion of the Governor, may require it.

SEC. 3. *Be it enacted, That so soon as the* BONDS *of the State shall have been issued for the first section of the road as aforesaid,* THEY *shall constitute a lien upon said section so prepared as aforesaid,* including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes, and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same shall be *invested* with *said* lien or mortgage without a deed from the company, *for the payment by said company of said bonds,* with the interest thereon as the same becomes due.

SEC. 4. *Be it enacted,* That when said company shall have prepared as aforesaid a second section, or any additional number of sections, of twenty miles each of said road, connecting with a section already completed for the iron rails, chairs, spikes, and equipments, as provided in the first section of this act, and the Governor shall be notified of the facts as before provided, he shall, in like manner, issue to said company like bonds of the State of Tennessee, to an equal amount with that before issued under the first section of the act for each and every section, of twenty miles of said road so prepared as aforesaid, but upon the terms and conditions hereinbefore provided, and upon the issuance of the said bonds, the State of Tennessee shall be *invested* with *a like mortgage or lien* without a deed from said company, upon said stock, and upon *said first and additional section or sections* of said road so prepared, upon the rails and equipments put, or to be put, upon the same, *for the payment of said bonds and the accruing interest thereon.* Provided, that if the last section of said road shall be less than twenty miles, or if the railroad proposed to be constructed by any company hereinafter specified, shall be less than thirty miles in extent, bonds of the State shall be issued for such section, or such railroad, as may be less than thirty miles in extent for an amount in proportion to the distance, as provided in this act, but upon the same terms and conditions in all respects, as required in

regard to the bonds to be issued for the other sections of said road. And when the whole of said road shall be completed the State of Tennessee shall be *invested with a lien, without a deed from the company*, upon the entire road, including the stock, right of way, grading, bridging, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to or necessary for its business; and all depots, and depot stations, *for the payment of all of said bonds issued to the company* as provided in this act, and for the interest accruing on said bonds. And after the Governor shall have issued bonds for the first section of the road, it shall not be lawful for the said company to give, create, or convey to any person or persons, or body corporate whatever, any lien, incumbrance, or mortgage of any kind which shall have priority over, or come in conflict with, the lien of the State herein secured; and any such lien, incumbrance, or mortgage shall be null and void as against said lien or mortgage of the State, which shall have priority over all other claims existing or to exist against said company.

SEC. 5. *Be it enacted, That it shall be the duty of said company to deposit in the Bank of Tennessee, at Nashville, at least fifteen days before the interest becomes due from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange or necessary commissions*, or SATISFACTORY EVIDENCE THAT SAID INTEREST HAS BEEN PAID OR PROVIDED FOR, and if said company fail to deposit said interest as aforesaid, or furnish the evidence aforesaid, it shall be the duty of the Comptroller to report that effect to the Governor, and the Governor shall immediately appoint some suitable person or persons, at the expense of the company, to take possession and control of said railroad, and all the assets thereof, and manage the same and receive the rents, issues, profits, and dividends thereof, whose duty it shall be to give bond and security to the State of Tennessee, in such penalty as the Governor may require, for the faithful discharge of his or their duty as receiver or receivers, to receive said rents, issues, profits, and dividends, *and pay over the same, under the direction of the Governor, toward the liquida-*

*tion of such unpaid interest.* And if said company fail or refuse to deliver up said road to the person or persons so appointed by the Governor, the person so appointed shall report that fact to the Governor, who shall forthwith issue his warrant, directed to the Sheriffs of the counties through which the road shall run, commanding them to take possession of said road, fixtures, and equipments, and everything pertaining thereto, and place the said receiver in full and complete possession of the same, and said receiver so appointed shall continue in the possession of said road, fixtures, and equipments, and run the same, and manage the entire road, until a sufficient sum shall be realized, exclusive of the costs and expenses incident to said proceedings, *to pay off and discharge the interest as aforesaid, due on said bonds,* which being done, the receiver shall surrender said road and fixtures and equipments to said company. The comptroller shall from time to time settle the accounts with the receiver, and the balance shall be deposited in the treasury of the State. The comptroller is authorized, and it is made his duty, upon his warrant to draw from the treasury any sum of money necessary to meet the interest on such bonds, *as may not be provided for by the company, as provided for in this act,* and the comptroller shall report thereof to the general assembly from time to time.

SEC. 6. *Be it enacted, That if said company shall fail or refuse to pay any of said bonds when they fall due,* it shall be the duty of the Governor to notify the Attorney-General of the district in which is situated the place of business of said company of the fact; and thereupon, said Attorney-General shall forthwith file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by the Court, *to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee, against any loss on account of the issuance of said bonds,* by ordering the said railroad to be placed in the hands of a receiver; ordering the sale of said road, and all the property and assets attached thereto

or belonging to said company, or in such other manner as the Court may deem best for the interest of the State.

SEC. 7. *Be it enacted*, That at the end of five years after the completion of said road, said company shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, *and as between the State and said company, the bonds so paid in shall be a credit on the bonds issued to the company; and bonds so paid in, and the interest accruing thereon, from time to time, shall be held and used by the State as a sinking fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be directed as aforesaid*, AND CANCELED. And should said company fail to comply with the provisions of this section, it shall be proceeded against, *as provided in the 5th section of this act.*

SEC. 8. *Be it enacted*, That the President of the company shall make semi-annual reports, under oath, to the Governor, until the completion of said road, setting forth fully the condition of the road and the company, and after its completion he shall report to the Governor annually, showing the financial condition of the company, giving a statement of the trade and travel upon the road, the receipts and expenditures, net earnings, and dividends, and what per cent. is paid on the stock to the stockholders. And said reports shall be consolidated every two years by the President of said company, and said consolidated reports shall be laid before the Governor by the first of September, every two years after the completion of the road, and the Governor shall lay said report before the Legislature for its action, at the next meeting thereof, after said report is made.

SEC. 9. *Be it enacted*, That it shall not be lawful for any officer of said company to engage in any speculation or dealing, directly or indirectly, in any real estate on or along the line, at any of the de-

pots or depot stations, or at either terminus of said road, until after the road is completed, and every officer of the company, before entering upon the duties of his office, shall take an oath in writing, before any judge or justice of the peace in this State, that he will not knowingly violate the provisions of this act, and that he will faithfully perform the duties of his office; and if any such officer of the company, or other person taking an oath as herein provided, knowingly swear falsely, he shall be deemed guilty of perjury, and subject to all the pains and penalties thereof, and every affidavit required under this act may be sworn to before any judge or justice of the peace in this State.

SEC. 10. *Be it enacted*, That the provisions of this act shall extend to and embrace the Chattanooga, Harrison, Georgetown, and Charlestown Railroad Company, the Nashville and Northwestern Railroad Company, the Louisville and Nashville Railroad Company, the Southwestern Railroad, the McMinnville and Manchester Railroad Company, the Memphis and Charleston Railroad Company, the Nashville and Southern Railroad Company, the Mobile and Ohio Railroad Company, the Nashville and Memphis Railroad Company, the Nashville and Cincinnati Railroad Company, the East Tennessee and Georgia Railroad Company, the Memphis, Clarksville, and Louisville Railroad Company, and the Winchester and Alabama Railroad Company, so far as the main trunk roads to be constructed by said companies lie within the limits of this State, and not otherwise, and said companies shall have all the powers and privileges and be subject to all the restrictions and liabilities contained in this act.

SEC. 11. *Be it enacted*, That the gauge of all of said railroads (unless connecting with roads in other States of a different gauge) shall be the same as that of the Nashville and Chattanooga Railroad, and not otherwise, and the iron rails to be put upon said road shall not be less than eighty tons to the mile, if the U rail is used, and not less than one hundred tons to the mile if the T rail is used.

SEC. 12. *Be it enacted, That the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed neces-*

*sary to protect the interest of the State, and to secure the State against any loss* IN CONSEQUENCE OF THE ISSUANCE OF BONDS UNDER THE PROVISIONS OF THIS ACT. BUT IN SUCH MANNER AS NOT TO IMPAIR THE VESTED RIGHTS OF THE STOCKHOLDERS OF THE COMPANIES.

SEC. 13. *Be it enacted*, That it shall be the duty of the Governor, from time to time, when there shall be reliable information given to him that any railroad company shall have fraudulently obtained the issuance of bonds of this State, or shall have obtained any of said bonds contrary to the provisions of this act, he shall notify the Attorney-General of this State, whose duty it shall be forthwith to institute, in the name of the State, a suit in the Circuit or Chancery Court of the county of the place of business of the company, setting forth the facts; and when the fact shall satisfactorily appear to the Court, that any of said bonds shall have been fraudulently obtained, or obtained contrary to the true intent, meaning, and provisions of this act, then, and in such case, the Court shall order, adjudge, and decree, that said road lying in the State, with all the property and assets of said company, or a sufficiency thereof, shall be sold, and the proceeds shall be paid into the treasury, *and it shall be the duty of the comptroller immediately to vest the same in stocks, creating a sinking fund, as provided for in the 7th section of this act;* and said company shall forfeit all rights and privileges under the provisions of this act, and the stockholders thereof shall be individually liable *for the payment of the bonds so fraudulently obtained* by such company, and for all other losses that may fall upon the State in consequence of the commission of any other fraud by such company, excepting such stockholders as may show to the said Court that they were ignorant of or opposed to the perpetration of such frauds by the company.

SEC. 14. *Be it enacted*, That in the event any of the roads, fixtures, or property belonging to any of said roads shall be sold under the provisions of this act, it shall be the duty of the Governor to appoint an agent for the State, who shall attend said sale and protect the interest of the State, and shall, if necessary to protect said interest, buy in said road or property, in the name of the State; and in case said

agent shall purchase said road for the State, *the Governor shall appoint a receiver, who shall take possession of said road and property, and use the same as provided for in the 5th section of this act*, and said receiver shall settle with the comptroller semi-annually until the next meeting of the General Assembly.

SEC. 15. *Be it enacted, That this act shall be deemed and taken to be a public act as to all purposes of notice: Provided*, That should any of the companies hereinbefore enumerated have, *bona fide*, and before the passage of this act, purchased or otherwise contracted for, upon their own credit, the necessary iron, rails, spikes, equipments, for the road or roads, or any section or sections thereof, the bonds of the State shall be issued to such company or companies, as hereinbefore prescribed.

SEC. 16. *Be it enacted*, That the railroad companies specified in this act, and all other railroad companies hereafter incorporated in this State, shall have power to construct their roads so as to cross each other, if necessary, by the main trunks or branches, or to unite with each other, or with the branches thereof; and it shall be the duty of said companies, when required, to receive on their roads and branches, the full loaded freight cars from each other and the branches thereof, and transport the same to their destination, and return them, without charging for the transportation of the goods, wares, merchandise, and produce therein, any greater rate of freight than they charge for similar goods, wares, merchandise, and produce in their own cars. *Provided*, that said companies shall not be compelled to receive such cars on their roads, unless they are constructed with the same gauge, and are of equal strength with their own cars, of which the principal engineer of the road of which it is proposed to require said cars to be transported shall be the judge. *Provided*, that the bonds of the State, proposed to be issued to the Memphis and Charleston Railroad Company under the provisions of this act, shall, in event of their issuance to said company, be divided between the main trunk line, proposed to be constructed by said company, and the branch thereof, from the town of Moscow to the town of Sommerville, in the county of Fayette, according to the respective lengths of

said main trunk line and said branch; and the lien of the State, as herein secured, shall continue upon said main line, and also upon said branch, until said bonds and interest are paid, as heretofore provided.

SEC. 17. *Be it enacted*, That in all cases where bonds may be issued to any of said companies, as provided in this act, the State of Tennessee shall be entitled to two directors in each company, to be appointed by the Governor of the State, to which bonds may be issued.

SEC. 18. *Be it enacted*, That when the Nashville and Chattanooga Railroad Company shall have completed twenty-five miles of their road, in addition to the eighty miles specified in the second section of the act, passed the 4th of February, 1848, chapter 169, then the Governor of the State shall indorse and guarantee, in the name and on behalf of the State of Tennessee, the bonds of said company to the amount of one hundred and seventy-five thousand dollars, and in like manner, when another section of twenty-five miles of said road shall have been completed, the Governor of the State, in the name and on behalf of the State, shall indorse and guarantee the bonds of said company to the additional amount of one hundred and seventy-five thousand dollars, and said bonds are to be indorsed and guaranteed in the same manner, and the same indemnity is to be furnished by said company for the protection of the State, and the like lien is to be given, and the same character of bonds are to be indorsed and guaranteed, as provided in the said act of the 4th of February, 1848.

SEC. 19. *Be it enacted*, That the aid contemplated by the first section of this act, shall only be extended to one of the roads chartered under the names of the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company. *Provided*, That the first of said roads which shall secure the subscription of the capital stock, for the construction of the same, shall be entitled to such aid. *Provided further*, If the Nashville and Southern Railroad Company first obtained the stock in their railroad, as provided in the first section of this act, and shall construct their road to the Tennessee river, to the Mississippi State line, or to a point between the

Tennessee river and the Mississippi State line, then the Tennessee and Alabama Railroad Company may construct their road from the Alabama State line to intersect with the Nashville and Southern Railroad, at such point as said company may select, and the provisions of this act shall extend to the Tennessee and Alabama Railroad, from said Alabama State line to said point of intersection. But if the Tennessee and Alabama Railroad Company first obtain the stock in their railroad, as provided in the first section of this act, and construct their road to the Alabama line, in the direction of Florence, then the Nashville and Southern Railroad Company may construct their railroad from the Tennessee river, the Mississippi State line, or any point between the Tennessee river and the Mississippi State line, so as to intersect the Tennessee and Alabama Railroad, at such point as the company may select, and the provisions of this act shall extend to said railroad from said point of intersection to the Tennessee river, the Mississippi State line, or to any point between the Tennessee river, and the Mississippi State line. And the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company, shall have power to unite or consolidate their stock if they deem it advisable, and upon such terms as the companies may agree upon. *Provided also*, that if the Memphis and Nashville Railroad Company shall not comply with the requirements of this act, and complete thirty miles of their road within four years; or if the Nashville and Northwestern Railroad Company shall, in like manner, fail to complete thirty miles of their road within four years, then the Tennessee Central Railroad Company shall have all the rights, powers, privileges, and benefits intended to be given by this act, to those companies respectively, under the same restrictions and limitations; but the said Tennessee Central Railroad Company shall be allowed two years longer time, in which to prepare thirty miles of their road-bed for the reception of the iron rails, and may then receive the aid of the State, in the issuance of bonds for their benefit, as prescribed in this act. *Provided*, That this provision shall not preclude any subsequent legislature from extending the time of four

years, in which to complete any section of thirty miles of said Nashville and Memphis, or Nashville and Northwestern Railroad. *That each of said companies is hereby authorized and required to appoint an agent or agents to whom the bonds shall be delivered, and whose duty it shall be to control said bonds, and see that they are exclusively applied to the payment of the railroad iron and equipments, as provided for in this act, and for no other purpose whatever.* And the said agent, before he receives the bonds of the State, shall give bond and security, to be approved by the Governor and payable to the State of Tennessee, for the application of the bonds, or the proceeds thereof, to the purposes aforesaid. *Provided*, That before any bonds, under the provisions of this act, shall be issued to any agent of any railroad contemplated by this act, the president of any such company shall first deposit in the office of the Secretary of State, a full, true, and accurate list of all the stockholders, with the sums subscribed by each and every stockholder.

SEC. 20. *Be it enacted*, That no road embraced in this act shall be entitled to State aid unless it shall, *within four years*, complete at least one section of thirty miles, or the whole length of the road, if less than thirty miles long.

Those portions of the act of February 21st, 1852, providing for identification of the bonds, by means of public records, are as follows :

SEC. 7. *Be it further enacted*, That the different Internal Improvement Companies, to whom the bonds of the State may be loaned under the different acts of the present Legislature, shall pay the expenses of engraving and preparing the same.

SEC. 8. *Be it enacted*, That the Governor of the State shall cause to be engraved and printed, the bonds which may be issued under the acts of the present General Assembly, as a loan made to Internal Improvement Companies, and the said bonds shall bear date on the first day of January prior to their issuance, and the coupons thereto shall be payable on the first days of January and July of each year.

SEC. 9. *Be it enacted, That the coupons shall be signed and numbered by the comptroller, and the bonds shall be countersigned, sealed, and numbered by the Secretary of State, and upon delivering said bonds to the company authorized to receive the same, the Secretary of State shall take a receipt, reciting the number, date, and amount of said bonds*, in a well-bound book to be deposited in his office, and the Comptroller and Secretary of State shall each be entitled to receive twenty-five cents for each bond so prepared, to be paid by the party receiving the said bond.

Your orator shows that the State of Tennessee, by act of its General Assembly, passed on the 8th of February, 1854, increased the amount of bonds to be issued to the several "internal improvement companies from $8,000 to $10,000 per mile," and provision was made for an issue of similar bonds to be used for bridge purposes. The said act was amendatory of the act passed 11th of February, 1852, "to establish a system of internal improvement in this State," and required that the increased amount of bonds should be received, "upon the terms and conditions mentioned in the act, which this was intended to amend." By the act of February 17, 1854, the length of the sections which it was necessary for the railroads to complete before obtaining bonds of the State, was decreased from twenty to ten miles, after the completion of the first section of thirty miles. By the act of January 19, 1855, the foregoing act was amended so that the grading only of ten-mile sections was required, in lieu of the completion of said sections. The act of October 29, 1855, was amendatory of the bridge law, above mentioned.

Your orator attaches hereto copies of said acts above referred to, marked Exhibit B, and makes them a part of his bill of complaint.

Your orator shows that there was delivered on account of the Mississippi and Tennessee Railroad and to the company of that name, internal improvement bonds of the State of Tennessee, being of the numbers, dates, and in the amounts hereinafter set forth :

| | |
|---|---|
| 2,495 to 2,552, White, B, 58 | $58,000 |
| 2,853 to 2,891, White, B, 40 | 40,000 |
| 1,946 to 1,995, Green, no letter, 50 | 50,000 |
| 5,106 to 5,255, Green, no letter, 150 | 150,000 |
| 716 to 755, Green, B, 40 | 40,000 |
| 756 to 810, Green, B, 55 | 55,000 |
| 831 to 835, Green, B, 5 | 5,000 |
| | $398,000 |

A copy of one of the said bonds and coupons is hereto attached, marked Exhibit C.

Your orator shows that the said bonds, to the amount of $398,000, were received by or on behalf of the Mississippi and Tennessee Railroad Company, through the officers appointed in the act of February 11, 1852, and were, by the said company, negotiated and sold, in pursuance of law, to *bona fide* holders. The proceeds of these bonds were to be applied to enable the company to which they were loaned, to earn the interest and principal moneys of the said obligations. About one hundred and twenty-six of the said bonds are now outstanding in the hands of *bona fide* holders. Your orator is the owner and holder of nine of said bonds, being of the numbers, dates, and descriptions in all respects of the bonds heretofore described and issued to the Mississippi and Tennessee Railroad Company by the State of Tennessee; all of which bonds bear date on or before the 1st day of January, 1856.

Your orator is likewise the holder of seven coupons, attached to all but one of said bonds, the same representing the installments of interest for three and one-half consecutive years, beginning with the installment that fell due on the 1st of January, 1876, and including the installment of the first day of January, 1879, and amounting in the aggregate to twenty-one per cent. of the par or principal amount of each one of the aforesaid bonds. One of the said bonds has fifteen overdue and unpaid coupons attached thereto. Your orator shows that the holders of said bonds are very numerous, and reside in foreign countries, as well as in different parts of the United States. Their names are in great

part unknown to your orator, and they are therefore not made parties hereto.

And further complaining, your orator shows that the Mississippi and Tennessee Railroad Company has failed to comply with the provisions of the general internal improvement law above recited, for the payment of the said installments of interest on your orator's bonds, and on the bonds of other holders in like situation, and the coupons of the bonds aforesaid are now in default and unpaid.

Your orator charges like defaults upon the coupons that have fallen due and have become payable by the Mississippi and Tennessee Railroad Company, according to the terms of the statute, on the first day of January, 1876; on the first day of July, 1876; on the first day of January, 1877; on the first day of July, 1877; on the first day of January, 1878; on the first day of July, 1878, and on the first day of January, 1879. The State of Tennessee is likewise in default on said coupons.

Your orator is entitled to the enforcement of the lien aforesaid, for the payment of interest on his bonds, and those of other holders, and for the appointment of receivers, under the powers of this Court of equity, for the purposes described in the statute.

Your orator further shows that it is provided by the statute that upon default in the payment of interest by any of the Internal Improvement Companies, upon the bonds loaned it, the right to impound the rents, issues, profits, and dividends shall accrue, for the purpose of paying over the same toward the liquidation of the unpaid interest. For the execution of that purpose, it provides that some suitable person or persons shall be appointed as receivers to take possession and control of said railroad, and all the assets thereof. Said receiver is to continue in possession and manage the entire road until a sufficient sum shall be realized, exclusive of the costs and expenses incident to such proceedings, to pay off and discharge the interest due on the bonds.

And now your orator shows that the said railroad

company pretends and claims that the aforesaid lien on its property is satisfied and discharged, without payment of the interest or principal of your orator's bonds, and that it is also absolved from the obligation which it assumed by the acceptance and use of your orator's bonds to pay the interest thereon.

It claims that the discharge of said incumbrance has been effected by and through the means of certain legislation, enacted in the years 1869 and 1870, many years after the sale of the said bonds, and while the same were outstanding, in the hands of *bona fide* purchasers thereof.

The said company pretends that by the act of February 21, 1856, increasing the sinking fund to two per cent. per annum, to commence from the date of the issuance of internal improvement bonds, and providing for reinvestment of the accruing interest in the sinking fund, it was intended that deliveries of bonds into the sinking fund should constitute a discharge of the statutory lien on the road, without payment of interest or principal of the bonds loaned to the company. It claims a similar effect to be deduced from the act passed on 20th March, 1860. Copies of the said acts are herewith attached, marked Exhibit D.

The said company likewise pretends that, by means of the acts of February 25, 1869, and of January 2, 1870, it was enabled to extinguish the obligation to pay the interest and principal of the internal improvement bonds issued to it, by means of the delivery to the State of any obligations of the State, though the said obligations were not secured by a statutory lien upon the Mississippi and Tennessee Railroad, or issued in aid thereof. The defendant claims to have complied with the provisions of said acts, and to have thereby discharged the said incumbrance, without payment of the bonds for which it was responsible.

Your orator shows that the said pretense is fraudulent, and he charges the facts to be as follows:

During the late civil war the railroad companies did not pay the interest on the bonds issued to them, and after the war they still continued in great part in default in mak-

ing the payments of interest on the said bonds. The State of Tennessee had likewise been in default during the same time. The market value of the bonds had meanwhile fallen very greatly, and the securities were very much depreciated, to about fifty per cent. or less of their par value.

Under these circumstances, the officials of the railroad companies conceived the project of avoiding the liabilities of these corporations for the payment of the bonds loaned to them. Their project was to treat the lien on the railroads as the absolute property of the State, without regard to the trust in favor of the holders of the bonds whose moneys the companies had received. They purposed to induce the legislature to proceed upon this basis, and to assign the lien on each road, in consideration of the receipt by the State of an amount of its bonds from each company, without regard to whether they were the bonds loaned to and the obligations of the company delivering them, and were entitled to the lien on its road. They applied themselves to the procurement of such acts of the General Assembly of Tennessee as they deemed would assist them in the accomplishment of their projects.

Your orator shows that the General Assembly did pass an act on February 25, 1869, a copy of which is hereto attached, marked Exhibit E. Your orator shows that the said act, as passed, differed in material respects from the bill drafted by the agents of the corporations. It had been amended in the course of its passage through the assembly, so as to preserve the rights of the Internal Improvement bondholders to their liens on the several railroads.

Your orator shows that the railroad companies, not being content with the said act, and not deeming that they had thereby acquired even the appearance of legislative support for the project on which they desired to enter, procured, at the next session of the legislature, the introduction of a bill, which, as amended, became the act of January 2, 1870, a copy of which is hereto attached, marked Exhibit F.

Your orator further shows that the said last mentioned act, as passed, differed in material respects from the bill which the officials of the railroad corporations had procured to be introduced, as appears by the insertion of the provisions hereinafter referred to.

Your orator shows that about said time the officers of some of the railroad corporations obtained the opinion of counsel that they might safely embark on the venture above described, and disregard the rights and liens of the holders of the internal improvement bonds. Your orator prays leave to bring proof of said opinions on the trial, and particularly of the opinion of Edward H. East and others. Your orator shows that at the time the officials of some of the railroad companies offered the new or so-called substitution bonds for sale (which bonds they claimed had acquired the lien of your orator's bonds), they published an opinion of New York counsel seeking to show that the State had the right to treat the liens of the internal improvement bonds in the manner above described. The said transaction in all its entirety was fully understood by the railroad company, and by the purchasers of the new bonds, as appeared from the face of their bonds, the deed purporting to secure them, and the legal opinions above mentioned. They knew that they were engaged in an attempt to grasp the security and property conferred by the distinct language of the statute upon the holders of the internal improvement bonds, for the payment of the interest and principal of their bonds.

Your orator further avers and shows that the said pretenses and claims are illegal and invalid and fraudulent. The defendants never had, nor have they, any right to affect or impair the contract and lien which was created and entered into by and between the holders of the internal improvement bonds loaned by the State of Tennessee to the railroad company, and the State of Tennessee as trustee of the said lien or mortgage, and the railroad company as the debtor under the said contract and lien.

Your orator charges that none of the aforesaid acts of the General Assembly purport to authorize the discharge of the

lien of the internal improvement bonds, issued to the railroad company, in any other mode than by the delivery of the identical bonds constituting liens upon the said railroad. The act of February 25, 1869, provides that the interest of the present bondholders of the State shall not be affected, and that railroad companies which have issued second-mortgage bonds, availing themselves of the provisions of that act, shall file with the comptroller, bonds of the same series as those loaned to such company, for which the State holds a first-mortgage lien. The act of January 2, 1870, requires that its provisions shall not be so construed as to allow the payment and satisfaction of debts created by bonds issued by the State, and upon which the State is secondarily liable, nor to the payment of the sinking fund.

Your orator charges that, under and by virtue of the provisions of the general internal improvement law of February 11, 1852, the State of Tennessee was only secondarily liable for the bonds loaned by it to the Mississippi and Tennessee Railroad Company, and that the said company was primarily liable under the provisions of said act, for the payment of the principal and interest of said bonds. And your orator charges that the said acts were not applicable by their terms to the lien secured to the bonds issued in aid of the Mississippi and Tennessee Railroad Company.

Your orator further charges that by the terms of the general improvement law of February 11, 1852, the State of Tennessee constituted herself the trustee for whomsoever might become the holders of the bonds loaned to the several railroad companies named in the act. The terms of that trust were defined and set forth in the sections of the statute.

By the acceptance of the bonds, and the use of their proceeds by the Mississippi and Tennessee Railroad Company, a mortgage lien attached to the property of the company, without a deed from the company, and the conditions of that mortgage were as prescribed in the statute. By the purchase of the said bonds, the holders thereof became entitled, by contract, to the lien rights set forth in the internal

improvement law. That lien was distinctly specified to be for the payment of the principal and interest of the bonds loaned to the company, as the same accrued and became due.

Your orator charges that the aforesaid acts, of date subsequent to the issuance of said bonds, in so far as they attempt, or may be construed to have authorized the satisfaction of the statutory lien established for the benefit of the holders of the internal improvement bonds of Tennessee loaned to the said company, by any other means than payment, impaired or sought to impair the obligation of the contract aforesaid, and were in violation of the Federal Constitution, and void, and all acts committed thereunder are illegal and null.

Your orator likewise shows that, by virtue of his right in equity as a lienholder and the terms of the statutory mortgage above described, he is entitled to have the possession of the Mississippi and Tennessee Railroad, in the State of Tennessee, secured by a receivership, for the benefit of the holders of the internal improvement bonds aforesaid, loaned to the Mississippi and Tennessee Railroad Company, and for the payment of the interest thereon, for which the said company became bound. The receiver or receivers so to be appointed should apply the revenues of the property to the payment of the overdue interest on said bonds.

Your orator shows that the officials of the State of Tennessee, named in the internal improvement law for the execution of the trusts pertaining to the statutory receivership, to wit, the comptroller and the governor, claim to be bound by the subsequent acts of the General Assembly of Tennessee, passed in the years 1869 and 1870, and your orator is unable to obtain the action of the said officials, or of the State of Tennessee, as trustee for the execution of the trusts aforesaid. Your orator shows that he is remediless at law and without the intervention of a court of equity.

Wherefore, your orator prays that the priority of the said lien of the internal improvement bonds and coupons afore-

said, upon all the railroad equipment, incomes, tolls, rights, privileges, property, and franchises of said Mississippi and Tennessee Railroad Company, within the State of Tennessee, may be established above all other claims and demands, as constituting the first and paramount incumbrance on said property and rights. That the income of said property, arising from its use in said State, may be applied to the payment of interest accrued and to accrue upon the bonds hereinbefore described, and as may appear by proofs before a master to be still outstanding and unpaid. That the said property may be seized by order of this Court and placed in the hands of receivers, to be administered according to the liens and trusts declared upon it, and to which it has been pledged and covenanted to be applied.

And, may it please your Honors, to grant unto your orators such further or other and different relief in the premises, as the nature of the case may require, and be consistent with equity and good conscience.

May it please your Honors, to grant unto your orator writs of subpena of the United States of America, to be directed to the said Mississippi and Tennessee Railroad Company, and against all other persons interested in this matter and amenable to the jurisdiction of this Court, when discovered, thereby commanding them and every one of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honors, in this honorable Court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such orders and decrees therein as to your Honors shall seem meet.

E. L. ANDREWS and GEORGE HOADLY,
*Solicitors, and of Counsel for Complainant.*

# APPENDIX.

## Exhibit B.

ACT OF FEBRUARY 8, 1854.

AN ACT to amend an act passed 11th February, 1852, entitled "An Act to establish a system of Internal Improvement in this State."

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the bonds of the State shall issue to the companies mentioned in the first and tenth, and nineteenth sections of the act which this is intended to amend, and also to the "Edgefield and Kentucky Railroad Company," "Central Southern Railroad Company," "Knoxville and Charleston Railroad Company," Mississippi Central and Tennessee Railroad Company," "Knoxville and Kentucky Railroad Company," "Tennessee Western and Charleston Railroad Company," and "Cincinnati, Cumberland Gap and Charleston Railroad Company," *upon the terms and conditions mentioned in the act which this is intended to amend*, but to the extent of ten thousand dollars (instead of eight thousand) per mile. *Provided*, that the aid of the State shall be extended to the South Carolina, Tennessee and Kentucky Railroad Company, in lieu of the Knoxville and Charleston Railroad Company, to the extent of fifty-five miles, and no more, in the event the Blue Ridge Railroad Company of South Carolina shall adopt the charter of said South Carolina, Tennessee and Kentucky Railroad Company, and obligate themselves in such manner as shall be satisfactory to the Governor, not to stop the construction of the said road at a junction with the East Tennessee and Georgia Railroad, but to build said road to South West Point; and said South Carolina, Tennessee and Kentucky Railroad Company, before it shall receive the aid herein provided, shall bring itself within the general provisions in all respects, of the act which this is intended to amend. But should the Blue Ridge Railroad Company not adopt such charter, and enter into the obligations aforesaid, then the provisions of this act and that which it is intended to amend, shall apply in all things to the Knoxville and Charleston Railroad Company.

SEC. 2. *Be it further enacted*, That bonds of the State shall issue to the companies mentioned in the first section of this act, and the tenth and nineteenth sections of that which this is intended to amend, for each bridge that said companies, or either of them, may have to build in East, Middle, and West Tennessee, across the Holston, Clinch, Big Hatchie, Tennessee, and Cumberland rivers, for the maximum sum that bonds are provided to be issued to said East Tennessee and Georgia Railroad Company, by an Act passed February 4, 1852, entitled, "An Act to aid in the completion of the East Tennessee and Georgia

Railroad," and upon the terms and conditions mentioned in said Act (except the 2nd section), and also in the fifth and sixth sections of an Act, passed February 26, 1852, entitled "An Act to charter the Chattanooga, Blue Spring, and Cleveland Railroad Company, and for other purposes," and said bonds to be issued under this section shall be included in the aggregate amount of stock raised by said companies in the same manner that the three hundred thousand dollars of bonds loaned to the East Tennessee and Virginia Railroad Company, under an Act, passed January 15, 1852, to enable said company to build bridges, are provided to be included in the aggregate amount of stock to be raised by the East Tennessee and Virginia Railroad Company.

SEC. 3. *Be it further enacted*, That the office of "Commissioner of Roads" be filled by the appointment of the Governor; that the incumbent shall hold his office for two years, and shall receive an annual salary of two thousand dollars. It shall be his duty to examine into the condition of railroad companies applying for the bonds of the State, and to report on oath to the Governor, the condition of said roads and the companies owning them; inquiring into and reporting all the facts necessary to be reported upon under this Act, and that which this is intended to amend. He shall further superintend and supervise the interest of the State in all the railroads and turnpike roads of this State, and whenever he may deem it necessary, report to the Governor any facts he may believe to be of importance to said interest. The said commissioner, in making his investigations, shall have the power to administer oaths, and send for persons and papers; and may, if in the opinion of the Governor it should be necessary and proper, apply to the Courts for aid to protect said interests; and it shall not be lawful for the Governor to issue such bonds to any railroad company until he shall be satisfied they have complied with the law.

SEC. 4. *Be it enacted*, That if any officer, agent, or servant of any railroad company receiving the bonds of the State, shall appropriate said bonds or the money arising from the sale thereof, or any portion of either, to any other use than that prescribed in the Act under which said bonds shall be issued, such person or persons so offending shall be deemed guilty of a felony, and, upon conviction, shall undergo confinement in the penitentiary for a period of not less than five nor more than fifteen years.

SEC. 5. *Be it enacted*, That no road embraced in this Act shall be entitled to its provisions, unless it shall, within four years, grade one section of thirty miles.

SEC. 6. *Be it enacted*, That the Governor shall indorse and guarantee the bonds of the Nashville and Chattanooga Railroad Company to an amount not exceeding six hundred and fifty thousand dollars, and the State shall thereupon, by virtue of this Act, be invested with a lien

upon the entire road of said company, with all its equipments, fixtures, etc., and shall have the same remedies for enforcing said lien as are given by previous Acts of the General Assembly directing an indorsement of the bonds of said company. The provisions of this Act shall extend to all railroad companies mentioned in the aforesaid Act, passed February 11, 1852, whose charters, routes, or names have been, or may hereafter be, changed; and if any two or more of said companies shall be consolidated, they, or the consolidated company, shall still be entitled to the provisions of this Act.

SEC. 7. *Be it further enacted*, That the Mississippi Central and Tennessee Railroad Company shall be entitled to the provisions of this Act from Jackson, Tennessee, to the Tennessee river, for any extension of said road which said company may make from Jackson by way of Huntingdon in the direction of Nashville. And, *provided further*, that nothing in this Act shall be so construed as to extend the time for the completion of the first section of the roads mentioned in the said Act of 11th February, 1852.

SEC. 8. *Be it enacted*, That the bonds to be issued under the provisions of this Act shall, *in no case be sold at less than par.*

SEC. 9. *Be it further enacted*, That the first section of an Act, passed February 11, 1852, entitled "An Act to establish a system of internal improvements in this State," be so amended that whenever the East Tennessee and Virginia Railroad Company shall have graded and shall have ready to put down the necessary timbers for the reception of rails, as is contemplated in said section, from Knoxville to the Holston river at Magbie's ferry, or to the Holston river at Middletown, at each end, it shall be the duty of the Governor to issue bonds of the State to the company, as is required in said section, and when said company shall have complied with the above requisitions, it shall be considered as fulfilling the requirements in full of the first section of the Act above referred to.

SEC. 10. *Be it enacted*, That the provisions of this Act shall extend to and embrace the Mississippi and Tennessee Railroad Company, chartered 5th December, 1853, and the State aid given to other roads by this Act shall be given in like manner to the said Mississippi and Tennessee Railroad, so far as the same lies in the State of Tennessee.

SEC. 11. *Be it enacted*, That the farther time of two years is hereby extended to the Southwestern Railroad Company to bring themselves within the provisions of the Act entitled "An act to establish a system of internal improvements in this State."

SEC. 12. *Be it further enacted*, That this Act shall take effect from and after its passage.

WM. H. WISENER,
*Speaker of the House of Representatives.*
EDWIN POLK,
*Speaker of the Senate.*

## ACT OF FEBRUARY 17, 1854.

**AN ACT** to amend the charter of the Memphis and Somerville Turnpike Company, and for other purposes.

. . . . . .

SEC. 5. *Be it enacted*, That the fourth section of an Act to establish a system of internal improvements in this State be amended by striking out the word *twenty* wherever it occurs in said section, and inserting the word *ten*, so as to allow all the railroad companies entitled to the benefits of said act, and an Act, passed February 8, 1854, as an amendment thereto, to obtain the bonds of the State upon sections of *ten* miles instead of *twenty* miles, after the first section of thirty miles has been completed.

WM. H. WISENER,
*Speaker of the House of Representatives.*
EDWIN POLK,
*Speaker of the Senate.*

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## ACT OF JANUARY 19, 1855.

**AN ACT** to amend the Internal Improvement Acts of 1852 and 1854.

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That hereafter it shall not be necessary for the Engineer-in-Chief to swear to the subscription list, solvency, and condition of any railroad company applying for State aid, but the oath required of the Engineer shall be taken by the President and Treasurer of the company, whose duty it is to know of the condition, solvency, and financial affairs of said company.

SEC. 2. *Be it further enacted*, That it shall be lawful and proper for the East Tennessee and Virginia Railroad Company to lay down iron at either end of said road, and to draw the bonds of the State according to the General Internal Improvement Act, passed February 11, 1851–2, and the Act of February, 8, 1853–4.

SEC. 3. *Be it enacted*, That the fifth section of the Act of February 17, 1854, be so amended that hereafter the bonds of the State may issue for ten miles or more of road graded, as required by existing laws, after the completion of the first thirty miles.

SEC. 4. *Be it further enacted*, That so much of the General Internal Improvement Acts of 1851–2, and 1853 and 1854, as requires the several railroad companies embraced within the provisions of the aforesaid Acts to have the bridges, abutments, and embankments on the several sections of their respective roads completed before the bonds of the State shall issue to the companies of said roads, be so amended as to accept those bridges, abutments, and embankments which have been provided with State aid.

SEC. 5. *Be it enacted*, That this Act shall take effect from and after its passage.

NEILL S. BROWN,
*Speaker of the House of Representatives.*
EDWARD S. CHEATHAM,
*Speaker of the Senate.*

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## Exhibit C.

$1,000. $1,000.

No. UNITED STATES OF AMERICA. No.

Know all men by these presents: That the State of Tennessee acknowledges to owe to , or order, One Thousand Dollars of the lawful money of the United States of America, which the said State promises to pay in the city of New York, on the day of , 18 , with interest thereon, at the rate of six per cent. per annum, according to the tenor, and upon the presentation of the coupons hereunto attached. For the payments of said sums of money, and the interest thereon, at the times and places, and in the manner aforesaid, the faith of the said State of Tennessee is irrevocably pledged, this bond being issued in pursuance and by authority of an act of the General Assembly of said State, passed February 11th, 1852, to establish a system of Internal Improvements in said State.

In testimony whereof, and in pursuance of the acts aforesaid, I, , Governor of the State of Tennessee, have hereunto subscribed my name officially, and caused the same to be countersigned by the Secretary of State, with the great seal of the State affixed.

[ ] Done at the Executive Department in the city of Nashville, this day of , 18 .

To which was attached the following form of coupon:

**30.** THE TREASURER OF THE STATE OF TENNESSEE. **30.**

Will pay the bearer THIRTY DOLLARS, in the city of New York, on the first day of January, 1877, being the semi-annual interest then falling due on bond No.

J. C. SUTTRELL, 30.
*Comptroller.*

## Exhibit D.

### ACT OF FEBRUARY 21, 1856.

AN ACT to aid in constructing a railroad from Chattanooga to the East Tennessee and Georgia Railroad, in the direction of Knoxville, and for the benefit of the East Tennessee and Virginia Railroad, and for other purposes.

. . . . . .

SEC. 5. *Be it further enacted*, That it shall be the duty of the several railroad companies in this State, who have received, or may hereafter receive, bonds of the State, or the indorsement of their bonds by the State to aid in the construction of their several roads, under the provisions of the act of 1851, 1852, and the acts amendatory thereto, at the expiration of five years from the issuance or indorsement of their several bonds, annually to set apart and pay over to the Treasurer of the State two per cent. per annum upon all bonds which have been or may hereafter be issued or indorsed as aforesaid as a sinking fund for the ultimate redemption of the bonds issued or indorsed as aforesaid; which sinking fund, when paid over, the Governor, Comptroller of the Treasury, and President of the Bank of Tennessee shall invest in the bonds of the State, and reinvest all accruing interest in like securities; and they are hereby constituted a board of commissioners for the management, government, and control of said sinking fund.

SEC. 6. *Be it further enacted*, That should any of said railroad companies fail, or refuse to comply with the provisions of the fifth section of this act, it shall be the duty of the Governor forthwith to notify the Attorney-General of the district in which is situated the place of business of said company failing or refusing as aforesaid, of the fact; and thereupon the Attorney-General shall immediately proceed against said company to collect said sinking fund, in the manner prescribed in the sixth section of the act entitled "An Act to establish a system of internal improvements in this State," passed February 11, 1852.

NEIL S. BROWN,
*Speaker of the House of Representatives.*
EDWARD S. CHEATHEM,
*Speaker of the Senate.*

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### ACT OF MARCH 20, 1860.

AN ACT to provide for the equalization and investment of the sinking fund, on the bonds issued to or indorsed for railroads in this State.

SECTION 1. *Be it enacted by the General Assembly of Tennessee*, That the money or bonds, that have heretofore or may be paid by the cities or railroad companies in this State to the Sinking Fund Commission-

ers by the 1st of January, 1860, together with the accruing interest thereon to that date, shall be passed directly to the credit of the party having so paid the same, and be a release to said party for that amount on the debt due by them to the State of Tennessee.

SEC. 2. Said bonds shall all be canceled by said commissioners, and if indorsed bonds of any railroad company shall be canceled as hereinafter provided for the cancellation of State bonds, and shall be delivered over to said company or corporation, taking the president's of said company or the officers' of said company receipt for the same, which receipt shall be filed and a copy of the same placed upon a book, which the said commissioners shall keep for that purpose. If State bonds, they shall be canceled and filed in the office of the Secretary of State as hereinafter provided.

SEC. 3. That after the first day of January, 1860, all railroad companies or city corporations who have or may hereafter receive the bonds of the State, or its indorsement of their own bonds under the general internal improvement law of this State, or any other law, shall be required to pay two and one-half per cent. per annum as a sinking fund on the amount of the bonds so issued or indorsed by the State for said company or corporation, to be paid in equal installments on the first days of April and October, five years after the date of said bonds, and annually thereafter.

SEC. 4. All bonds issued during any one year shall be dated on the first day of January of that year.

SEC. 5. Said companies or corporations may pay said sinking fund in cash or in the like character of bonds that may have been issued or indorsed by the State for said company at their face or par value.

SEC. 6. If paid in money, the commissioners shall invest it immediately in the bonds of the State, and shall have the same canceled and filed as heretofore provided. Such bonds are to be of the same character as those issued to such company or corporation.

SEC. 7. The sinking fund, when paid, in all cases shall be passed directly to the credit of said company or corporation, and be a release to said company or corporation from that amount due by them to the State. The commissioners shall issue a receipt to each company or corporation for such payment, retaining a duplicate in a well-bound book kept for that purpose.

SEC. 8. Each and every railroad company or city corporation shall provide the interest semi-annually, as now provided by law, on the amount of bonds unpaid at the time said interest falls due, and not on the original amount issued to or indorsed by the State for said company as heretofore provided.

SEC. 9. The Comptroller of the State shall keep a regular account against each company or corporation, charging them with the amount of bonds originally issued to or indorsed for said company or corpora-

tion by the State, and crediting them by the amount of the sinking fund paid, and shall furnish the Treasurer of State a statement of the amount due by each company or corporation on the first day of June and December of each year, that he may know how much interest each company or corporation has to pay.

SEC. 10. The commissioners of the sinking fund shall cancel all bonds of the State as soon as paid in or purchased, by cutting out the Governor's and Secretary of State's names, and so defacing each coupon that it can not by possibility be used or circulated, and shall file the same in the Secretary of State's office.

SEC. 11. This law shall be in full force from and after its passage, and shall repeal all laws in conflict with it, but shall not be so construed as otherwise to affect any law on the subject of the sinking fund or the payment of interest due on State or indorsed bonds.

W. C. WHITTHORNE,
*Speaker of the House of Representatives.*
TAZ. W. NEWMAN,
*Speaker of the Senate.*

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## Exhibit E.

ACT OF FEBRUARY 25, 1869.

AN ACT to Liquidate the State Debt, contracted in aid of Railroad Companies in the State of Tennessee.

WHEREAS, under the General Internal Improvement Laws of the State, passed from time to time, aid has been granted to various railroad companies by the loaning of six per cent. bonds of the State, to enable said companies to iron, equip, build, and bridge, and for other purposes, which is now secured to the State by a first mortgage or lien on the franchise, property, and fixtures of respective railroad companies; and,

WHEREAS, it is desirable for the general welfare of the State, that the State shall be reimbursed such amounts as have been advanced to the different railroad companies, as fast as may be practicable; therefore,

SECTION 1. *Be it enacted by the general assembly of the State of Tennessee,* That the respective railroad companies, or either of them that have created indebtedness to the State, are hereby authorized to repay any amount of the principal of such indebtedness as they have respectively created in the bonds of the State, in such amount, and at such times, as may be practicable:

*Provided, however,* that nothing in this Act shall be so construed as to release said railroad companies from any lien which the State may have on the same for any unpaid interest now due on said bonds of the State authorized to be surrendered by this Act.

SEC. 2. *Be it further enacted*, That any railroad company or companies repaying any indebtedness due the State under the provisions of this act, are authorized to issue bonds of equal amount and denomination with the bonds of the State paid and delivered up for cancellation, as hereinafter provided, which said railroad bonds, so issued in lieu of any amount of State bonds, shall be certified to by the comptroller, entered in a book to be kept for that purpose, with date, number, and amount, and shall be a lien, pro rata in amount and of equal validity and effect with the unretired part of the State indebtedness upon such railroad, and all its property, franchises, fixtures, and material.

SEC. 3. *Be it further enacted*, That in order to facilitate the railroad companies that may wish to avail themselves of the provisions of this act in paying the indebtedness due to the State, respectively, they, or any of them, are hereby authorized to consolidate their property, in whole or in part, with other railroad companies, and issue bonds and stock as provided for in the second section of this act, and may adopt the corporate franchise of either of the roads as the stockholders may elect, and each railroad company paying its indebtedness, and such railroad companies as may consolidate under the provisions of this act, are hereby authorized to determine, by a vote of the stockholders of said company or consolidated companies, the number of directors of such company, and elect the same under the new organization, and that the said directors, so elected, shall, according to the by-laws and rules of said corporation, elect one of their number president of said company.

SEC. 4. *Be it further enacted*, That the comptroller of the State shall receive from the railroad companies, or any of them, bonds of the State in such amounts as may be presented, and cancel the same in the presence of the officer or agent of the railroad company paying them in, and execute to the said railroad company or companies duplicate receipts for the amount and number of said bonds so paid in, and it shall further be the duty of the comptroller to certify on the bonds of any railroad company or companies repaying indebtedness due to the State, that the same has been paid, and that the so certified (bonds) are secured by first mortgage.

*Provided*, That said railroad companies shall liquidate their indebtedness prior to the maturity of the bonds that have caused said indebtedness; and be it further provided, that said bonds, when executed by the respective railroad companies or either of them, shall be deposited with the Comptroller of the State, whose duty it shall be to deliver said bonds, or any number of them, to the president and directors of the company, on the deposit by said president and directors or authorized agent of an equal amount of the six per cent. bonds of the State of Tennessee, with unpaid coupons attached, and the

company's first mortgage bonds, authorized to be issued by this act, shall have no validity or value except the comptroller's certificate is affixed on the face of each bond, that said bond is executed, and issued and by virtue of law taken the place of a bond of the State and is the first mortgage bond.

SEC. 5. *Be it further enacted*, That the comptroller shall be entitled to a fee of one dollar on each thousand dollars of the bonds certified as aforesaid, to be paid by the railroad company for which the same is done; and it shall be lawful for the comptroller to discharge the duties imposed by this act, by and through an agent in the city of New York; and all the provisions of this act shall attach to and become a part of the charter of any railroad company or companies acting under it.

SEC. 6. *Be it further enacted*, That by and with the consent of the board of directors of any railroad company in this State under the General Improvement Law, passed the 11th of February, 1852, and all the amendments thereto, that any person or corporation may, by paying the indebtedness of such railroad company to the State in the bonds of the State, as provided for by law, be, and they are hereby substituted and entitled to all the liens against said company for the payment of said debt that the State had or has by law, and the Governor and Secretary of State shall give such party or parties paying such indebtedness a certificate showing the facts, which shall be evidence against said company of such indebtedness to said individuals or corporations.

SEC. 7. *Be it further enacted*, That any person or persons may, with the consent and approbation of any railroad company which is indebted to, and for which the State of Tennessee holds a lien, pay the said debt, *so far as the State is concerned*, in the bonds of the State, or any coupons of bonds at par, and the person or persons so paying the debt of any railroad company with the consent of such railroad company, shall, upon filing with the treasurer of this State the written assent of said railroad company, under the corporate seal of said railroad company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being to place the person or persons so paying with the consent of said railroad company in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

SEC. 8. *Be it further enacted*, That any person or persons who may with the consent and approbation of any railroad company, pay any part or portion of the indebtedness of such company, as provided in Sec. —, shall have, hold, and be subrogated in all the rights, privileges,

and lien or liens of the State, to the extent of, and in proportion to, the amount of such indebtedness, with the same rights and privileges the State now has, to the extent of such payment or payments: *Provided, the passage of this act shall not decrease the lien of the State upon any railroad of the State until the entire claim of the State is fully liquidated,* OR AFFECT THE INTEREST OF THE PRESENT BONDHOLDERS OF THE STATE; *Provided, that railroad companies which have issued second mortgage bonds, availing themselves of the provisions of this act, shall file with the comptroller bonds of the same series as those loaned to such company, for which the State holds a first mortgage lien. Provided, the bonds to be issued by the company, under the provisions of this act, shall not have a longer time to run than the bonds of the State thus released and canceled.*

SEC. 9. *Be it further enacted,* That this act shall take effect from and after its passage.

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## Exhibit F.

### ACT OF JANUARY 2, 1870.

AN ACT for the Payment of the State Debt.

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee,* That an Act entitled "An Act to liquidate the State debt, contracted in aid of railroad companies in the State of Tennessee," passed February 25, 1869, be, and the same is hereby amended, so as to allow any railroad company which may be indebted to the State by reason of the bonds of the State loaned to said railroad company, to pay into the State, in liquidation of the principal of said indebtedness, any of the legally-issued six per cent. bonds of the State of Tennessee outstanding, without regard to series or number; and such payment shall, to the extent made, be a full and perfect discharge of the lien which the State holds upon the property of such railroad company, held by virtue of the bonds of the State issued to such railroad company, whether they be the same bonds or the same series of bonds issued to said company under the act passed February 11, 1852, and acts amendatory thereof, or not.

SEC. 2. *Be it further enacted,* That railroad companies issuing their own mortgage bonds under the provisions of the act which this is intended to amend, be allowed to fix the rate of interest which the said bonds of the railroad company are to bear, and all laws in conflict are hereby repealed. *Provided,* that when said railroad companies owe interest already due, coupons past due shall be taken by the comptroller or treasurer in discharge of such indebtedness for interest.

SEC. 3. *Be it further enacted,* That when any company, under the provisions of this act, shall pay into the treasury of the State bonds which have been issued by the State to said company, the said bonds

shall be canceled; but should any company, in discharge of its own debts, pay into the treasury any bonds that were issued to other companies that may still be indebted to the State, such bonds so paid in shall not be canceled, but shall be held by the State as purchased bonds, retaining a lien for the State upon the road to which said bonds were originally issued until the debt of said road to the State shall be fully discharged, when the bonds so held shall be canceled. *Provided*, that the provisions of this act shall not be so construed as to allow the payment and satisfaction of debts created by bonds issued by the State, and upon which the State is secondarily liable, nor to the payment of the sinking fund, now required by law, of the railroad companies of this State.

SEC. 4. *Be it further enacted*, That this act shall take effect from and after its passage.

# United States Circuit Court,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

[In Equity.]

CALVIN AMORY STEVENS, in behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MISSISSIPPI and TENNESSEE RAILROAD COMPANY,

*vs.*

THE MISSISSIPPI & TENNESSEE RAILROAD COMPANY.

Respondent, the Mississippi and Tennessee Railroad Company, now and at all times saving all benefit of exceptions that there may be taken to the many errors and insufficiencies in said bill of complaint, for answer thereto, or to so much as it is advised it is material for it to answer, answering, says:

It admits it is a body politic and corporate, chartered in due form of law by an act of the Legislature of the State of Tennessee, passed December 5, 1853. That it was also incorporated by an act of the Legislature of the State of Mississippi, passed October 16, 1852, that the object and purpose of said incorporation by said acts was the construction, completion, and thereafter the operation and management of a line of railway for the transportation of passengers and freight from the

29 city of Memphis, in said State of Tennessee, to Grenada, in said State of Mississippi; that for this purpose such powers were granted to it as are declared in its several charters and acts of incorporation; that it was authorized and empowered to borrow money for the purposes of the enterprise, and that it was also authorized to impose liens and execute mortgages upon its property to provide for and ensure the payment of its liabilities. Complainant has failed to attach any exhibit marked "A" to his bill of complaint, and therefore respondent
30 cannot say whether he has true and perfect copies of said charter, with its several amendments, as passed by the Legislature of Tennessee; but it will produce such copies at the hearing, should the same be material.

Respondent, further answering, admits that the General Assembly of the State of Tennessee passed an act on the 11th of February, 1852, entitled "An Act to establish a system of internal improvements in the State," but it does not concede, and on the contrary
31 denies that complainant has set forth the same correctly in his bill, and reserves the right to present a true and perfect copy thereof upon the hearing of this cause. Respondent also denies the construction placed by complainant upon said act, and each and every allegation contained in his said bill, as to the purpose and object of the same, except in so far as the same is admitted in this answer.

Respondent is advised, and so charges, that this was
32 not the first act passed with relation to internal improvements. The subject had engaged public attention in the State for many years prior to this time, and had taken form in that provision of her constitution of the year 1834, which declares that "A well regulated system of internal improvements is calculated to develop the resources of the State, and promote the happiness and prosperity of her

citizens, and therefore it ought to be encouraged by 9
the General Assembly." Pursuing the line of policy
here laid down, successive Legislatures, by a series of
acts, partial in their application, and varying in their
terms, extended the aid of the State to many corporate
bodies having for their object the construction and
improvement of turnpikes, railroads, and other ave-
nues of travel. The scheme adopted by this legisla-
tion was for the State to subscribe for a given portion
of the capital stock of such enterprises, and in pay-
ment of the same, issue her bonds, making provision 10
for the payment of the interest accruing thereon out
of the tolls and revenues of said companies. This leg-
islation was crude and experimental in its character,
and as experience proved unsatisfactory in its results.
After a full and fair trial of this system, and when its
unsuitableness to the end in view was demonstrated, it
was abandoned. Thereupon, the Legislature fell upon
the plan of endorsing the bonds of the various inter-
nal improvement companies, which it was deemed pol-
itic to aid. This was done in several instances, but was 11
also found unsatisfactory in its practical workings.

Notwithstanding these abortive, and in some instan-
ces disastrous efforts, the general policy of supple-
menting individual effort with State aid was still re-
garded as a measure of sound political economy, was
time and again recommended by several Governors of
the State in their messages to the Legislature, and
finally became the fixed and definite policy of the
State, which culminated in said act of February 11, 12
1852. Respondent will produce at the hearing of this
cause properly certified copies of said acts, messages,
and other public documents, in so far as they may be
material or necessary.

Respondent concedes that the said Act of February
11, 1852, had for its object the establishing of a system

13 of internal improvements in the State, as is explicitly set forth in the preamble and clearly indicated in the body of said act. It concedes that the plan proposed was substantially that when any of the various railroad companies therein mentioned as being entitled to the benefits of said act, should procure bona fide subscriptions to the capital stock to an amount sufficient to grade, bridge and prepare for the iron rails the whole extent of the main trunk line proposed to be constructed by said company, and it was shown by said
14 company to the Governor of the State that said subscriptions were good and solvent, and whenever said company had graded, bridged and had ready to put down the necessary timbers for the reception of the rails, and fully prepared thirty miles of said road at either terminus, and the Governor was notified of these facts, and that said section, or any part thereof, was not subject to any lien whatever other than those created by the acts in favor of the State of Tennessee, by the written affidavits of Chief Engineer and President
15 of said company, etc., then said Governor should issue to said company coupon bonds of the State of Tennessee to an amount not exceeding eight thousand dollars per mile, bearing interest at the rate of six per cent. per annum, and having not less than thirty nor more than forty years to run ; that whenever a second section of twenty miles should be completed, connecting with the first, the Governor, upon notification, should issue to said company like bonds of the State of Tennessee to the amount of eight thousand dollars
16 per mile; and should the last section be less than twenty miles, then at the same rate as above stated.

Respondent admits, that by the terms of said act the Governor of the State had the power conferred to appoint a commissioner to act in conjunction with the president of the company in negotiating the said bonds ; and also, that said act was made a public law for all purposes of notice.

Respondent further concedes, that the Act of the 8th of February, 1854, increased the amount of the bonds to be issued to the several internal improvement companies aforesaid, from $8,000 to $10,000 per mile; that provision was also made for the issues of similar bonds for bridge purposes; and that by the Act of February 17, 1854, the lengths of the sections which it was necessary for the railroad companies to complete before obtaining the bonds was decreased from twenty to ten miles, after completion of the first section of thirty miles.

Respondent admits, that by virtue of and under the provisions of the Act of February 8, 1854, it was declared to be entitled to the benefits of said Act of February, 11, 1852, and to receive bonds of the State of Tennessee of a like character, upon the same basis and terms with those issued to the said railroad companies specifically named in said act; and that it did thereafter receive said bonds, and at the times and in the amounts following, viz:

| | |
|---|---|
| July 24, 1855 | $58,000. |
| July 24, 1855 | 40,000. |

Respondent also shows that it received on May 3, 1866, under and by virtue of an Act of the Legislature, passed January 17, 1866, and for the purposes therein mentioned, the further sum of $50,000. This act, by its preambles, expressly declared that it was amendatory of the said Act of February 11, 1852, and reserved the same liens as is given for the security of the State therein. In addition, the State was invested with a lien on the profits derived by respondent from the operation of its road, as a further security for the payments to the State the sums required for the sinking fund and to meet the interest on said bonds.

21 Respondent further shows, that it received from the State on the 15th day of December, 1866, the additional sum of $150,000, by virtue of an act of the General Assembly of said State, passed December 16, 1866, authorizing the issuance of the same conditions and penalties as prescribed in said Act of January, 18, 1866.

Respondent further admits that it received from the State on the 14th and 15th days of January, 1868,
22 $100,000 in her bonds, under an act passed December 7, 1867, which declared the loan thus given to be made in a like manner and under the same conditions imposed by the internal improvement laws of the State.

Respondent concedes that these various sums aggregate $398,000 in bonds of the State. Said bonds had coupons attached, and bore interest at the rate of six per cent. per annum. It also concedes that said bonds after the dates of their reception, as above stated,
23 were negotiated and sold. Respondent does not know whether or not "Exhibit C" to complainant's bill is a true copy of said bonds and coupons, nor whether said bonds are all facsimiles of each other, and insists that the best and only evidence of all this will be the bonds themselves. Nor does it admit that complainant is, as he asserts, the owner and holder of nine or any number of said bonds, nor of said coupons, nor any of them; nor that the same nor any other of said bonds are numbered as set forth in said bill, but
24 demands proof of the same.

Respondent expressly denies that said act provided for any system of numbering or otherwise marking and designating said bonds, so that those issued to one of said railroad companies could be identified and distinguished from those issued to any other of said companies. The Legislature, by an act passed Feb-

ruary 21, 1852, among other things, did make pro- 25
vision for the signing and numbering of the coupons by the Comptroller, and for the countersigning, sealing and numbering of the bonds so issued by the Secretary of State, and that upon delivering said bonds to the company authorized to receive the same, the Secretary of State should take a receipt reciting the number, date, and amount of said bonds in a well bound book, to be deposited in his office. The evident and only intent and object of this act was to provide the State of Tennessee with an authentic and ready means 26
of ascertaining to what company each particular bond was issued. This was desirable and necessary on many accounts, but especially for the reason that the 7th section of the act of February 11, 1852, provided that each of the railroads receiving aid under said act should, at the expiration of five years after their completion, set apart one per centum per annum upon the amount of bonds issued to the company, and should use the same in the purchase of bonds of the State of Tennessee, and should pay the same into 27
the treasury of the State of Tennessee, etc., and that bonds so paid in, and the interest accruing thereon, should be held and used as a sinking fund for the *payment of the bonds* issued to the company, and should said company re-purchase any of the bonds issued to it under the provisions of said act, that it should be a credit as aforesaid, and cancelled.

It is obvious that unless the *State* had some record by means of which the bonds issued to each company 28
could be precisely identified, it would be impossible for her officials to know what bonds and coupons, when paid in under the provisions of said section, should be kept alive and held and used as a sinking fund, and what cancelled. The said act of February 11, 1852, did not require such record to be kept, and the omission was remedied by the act of February 21, 1852.

5 Respondent avers that it was never intended as a record or registry for the benefit of the bondholders. They were not supposed by the Legislature to have any interest in the matter. Had any such idea prevailed, or been thought of by the authors of the act of February 11, 1852, they would have in said act provided some method by which the holder of each bond could know to what road his bond had been issued. And especially had it been intended to create and constitute the lien now set up by complainant and his co-bond-
6 holders, the act so creating and constituting the same would assuredly have required each bond issued under its provisions to set forth upon its face to what company it was issued, and so show upon what property it was an incumbrance. No Legislature would have been guilty of the gross ignorance and folly of offering for sale—certainly no capitalist would have thought of purchasing—a bond showing it was secured by a lien or mortgage, and yet failing to designate what property the mortgage or lien embraced.

7

The truth is, respondent charges, that no holder of any Tennessee bond under the act of February, 11, 1852, supposed, at the time of buying the same, that he had a lien or mortgage upon any railroad or other property, but relied solely upon the security offered upon the face of his bond, viz: the faith and credit of the State of Tennessee.

Respondent charges that no holder of any of said
8 bonds, as a matter of fact, knew or cared to what road his bond was issued—that no inquiry was ever made by any of said holders for many years after said bonds were issued to ascertain this fact, and this, although the State had repeatedly defaulted in the payment of interest on said bonds.

Respondent, further answering, admits that the issu-

ance of said bonds to the railroad companies, mentioned 33
in said act, was to assist them in the construction and equipment of their roads, by negotiating the bonds and using the proceeds thereof for that purpose, and that these bonds were to be made payable at such places in the United States as the respective presidents of said companies might designate. This latter provision was to enable said companies to designate the places of payment at one or more of the great stock and money centers of the United States, and to add to the attractive-
ness of the investment in the eyes of capitalists by the 34
ease and convenience with which they could collect the interest upon the same. But respondent denies "that in order to insure a sale and market for said bonds, and to create confidence in the public, and on the part of persons to whom said bonds might be offered for sale, and who might become purchasers of the same, that each company would punctually pay the principal and interest of the bonds loaned to it; or, in case of its failure, that ample security might be provided therefor,
which might be easily realized, it was provided by stat- 35
ute that so soon as the bonds of the State shall have been issued for the first section of the road, they shall constitute a lien upon said section, without a deed from the company, and with a like lien or mortgage upon the additional sections, and upon the entire road, including the stock, for the payment of all the bonds issued to the company and for the interest accruing thereon." It is true that a lien was secured on said sections as the bonds were
issued, and upon the completion of the entire road said 36
lien or mortgage attached thereto; but respondent avers that said security was for a very different purpose from that indicated by complainant. It was never thought necessary by the Legislature to add anything in the nature of lien or mortgage to support and maintain the credit of the State of Tennessee, or render saleable securities for the payment of which she pledged her

resources and honor. Her people at that time were free from debt, prosperous, proud of their State, and zealous of her good name—the State debt, by comparison with her taxable values, was almost nominal. Both at home and abroad existed the most implicit confidence as to her ability to pay and scrupulous integrity. Under these circumstances it was not remarkable, and the fact was, that her bonds and other obligations were eagerly sought for, and commanded a premium in the markets of this country and of Europe. There were issued by the State, bonds for other purposes, such as the Capitol bonds, Hermitage bonds, Bank of Tennessee bonds, where there was no pretense whatever of a lien or other security beyond the individual pledge of the State, and yet these were just as valuable, and were always quoted at as high a figure as those issued to the railroads, and which it is alleged constitute a lien upon the same.

Again, several of the companies who received aid under the Internal Improvement Act aforesaid, by reason of mismanagement or from other causes, were of but little value, whilst others under prudent and judicious administrations were worth much more than the amount of Tennessee bonds issued to them. Nevertheless in every instance the bonds so issued commanded the same price—no more and no less. Respondent concedes that the lien or mortgage reserved in said act of February 11th, 1852, was created and existed by virtue of the statute—and became and was operative without conveyance or assurance of any kind from the corporations receiving the State aid aforesaid under its provisions—and that it was superior to all other liens upon said railroads.

Respondent avers that the only object and purpose of said act in retaining the statutory lien and mortgage aforesaid, was to protect the *State, and the State alone*, from loss, by reason of the failure of any of said cor-

porations to provide the State in the manner prescribed 41
in said act with a sum sufficient to pay the interest on said bonds—and to pay the principal on said bonds when they fell due. To that end the Legislature adopted a suitable phraseology. They declare that the bonds upon their issuance shall constitute a lien upon said section so prepared as aforesaid, including the road-bed, right of way, grading, bridges and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes and equipments, when purchased and delivered, and the 42
*State of Tennessee*, upon the issue of said bonds, and by virtue of the same time, shall be invested with said lien or mortgage, without a deed from the company, for the payment by said company, with the interest thereon as the same becomes due—"that when said company shall have prepared as aforesaid a second section or any additional number of sections of twenty miles each of said road, connecting with a section already completed for the iron rails, chairs, spikes and equipments, as provided in the first section of this act, and the Gover- 43
nor shall be notified of the facts as before provided, he shall in like manner issue to said company like bonds of the State of Tennessee to an equal amount with that before issued under the first section of this act, for each and every section of twenty miles of said road so prepared as aforesaid, but upon the *terms and conditions* hereinbefore provided, and upon the issuance of said bonds, *the State of Tennessee shall be invested with a like lien or mortgage*, without a deed from said company, upon said stock and upon said first and additional sec- 44
tion or sections of said road so prepared, upon the rails and equipments put or to be put upon the same, for the payment of said bonds and the accruing interest thereon; *provided*, That if the last section of said road shall be less than twenty miles, or if the railroad proposed to be constructed by any company hereinafter specified shall be less than thirty miles in extent, bonds of the

State shall be issued for such section, or such railroad as may be less than thirty miles in extent, for an amount in proportion to the distance, as provided in this act, but upon the same terms and conditions in all respects as required for the bonds to be issued for other sections of said road. And when the whole of said road shall be completed the *State of Tennessee* shall be invested with a lien, without a deed from the company, upon the entire road, including the stock, right of way, grading, bridges, masonry, iron rails, spikes, chairs and the whole superstructure and equipments, and all the property owned by the company, as incident to, or necessary for, its business, and all depots and depot stations, for the payment of all of the bonds issued to the company *as provided in this act*, and for the interest accruing on said bonds. And after the Governor shall have issued bonds for the first section of the road, it shall not be lawful for said company to give, create or convey to any person or persons, or body corporate whatever, any lien, incumbrance or mortgage of any kind, which shall have priority over or come in conflict with *the lien of the State hereby secured*, and any such lien, incumbrance or mortgage shall be null and void as against *said lien or mortgage of the State, and said lien or mortgage of the State* shall have priority over all other claims existing or to exist against said company."

Respondent denies that the payment of the interest upon said bonds, and at their maturity of the bonds themselves, contemplated by said act, was a payment *by the railroads to the bondholders*—or that the latter had any claim or recourse against said companies. On the contrary, as before stated, as between the bondholder and said companies, or either of them, no privity of contract or relationship of any other character existed. The railroads were not parties to the bonds so issued, either as principals, endorsers or guarantors—

their names nowhere appeared upon the same; nor, as 49
before stated, did such holders know or care to what railroad the bonds they held were issued—until recently, and when their apprehensions as to the payment of the interest or principal of said bonds were excited, by the failure of the State of Tennessee to meet said interest, or make provision for the ultimate payment of the principal. After repeated efforts on the part of said bondholders, within the last few years, to induce successive Legislatures to make such provision, and their failure to accomplish anything in that direction, and 50
after repeated efforts to induce and effect a compromise with the said State of her indebtedness on said bonds—which also were unsuccessful—they now for the first time have bethought themselves of their lien upon the railroads. Respondent charges, upon information and belief, that the complainant was an active and prominent participant in all said efforts to induce a compromise and settlement of said State debt.

Respondent submits that the *payment* of interest and 51
principal contemplated by said act was to be in the manner provided therein. The method by which said companies were to pay the interest aforesaid is set forth in the 5th section of said act, which provides "that it shall be the duty of said company to deposit in the Bank of Tennessee at Nashville, at least *fifteen* days before the interest becomes due, from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange and necessary commissions, or satisfactory evidence that 52
said interest has been paid or provided for; and if said company fail to deposit said interest as aforesaid, or furnish the evidence aforesaid, it shall be the duty of the Comptroller to report the fact to the Governor." Said section further provides that thereupon it shall be the duty of the Governor immediately to appoint some suitable person as receiver, to take possession of and

53 operate said road, and receive the rents, profits, issues and dividends of said road, and pay over the same, under the direction of the Governor, toward the liquidation of such unpaid interest.

Respondent further submits, that by a proper construction of the said act, not only was no obligation imposed on the railroad companies to pay the interest accruing on the bonds so loaned them to *the holders* thereof—but said companies were not even required to
54 pay the *interest as such* to the State. Their undertaking, as expressed by the terms and conditions of said act, was to *provide a sum sufficient to pay* the interest on said bonds—and deposit the same in the Bank of Tennessee fifteen days before such interest fell due. When this was done, their liability was at an end. Respondent says the Bank of Tennessee was an institution created and wholly owned by the State—performing the functions of her fiscal agent. That said bank was established by an act of the Legislature
55 passed January 19th, 1838, entitled "an act to establish a State Bank, to raise a fund for internal improvement and to aid in the establishment of a system of education"—in which it was among other things, provided, "That a bank shall be, and is hereby established, in the name and for the benefit, of the State, to be known under the name and style of the Bank of Tennessee, and the faith and credit of the State are hereby pledged for the support of said bank, and to supply any deficiency in the funds hereinafter specifically
56 pledged, and to give indemnity for all losses arising from such deficiency." That all funds belonging to the State were deposited in said bank—and all disbursements of the State were made by checks of the various State officials upon it—or directly by said bank, as the State's agent, and the said bank was from the time of its creation, and during its existence, which continued for many years after the passage of the act of February

11th, 1852, to all intents and purposes, the Treasury of 57
the State—and the depositing the sum aforesaid by the railroad companies with the bank was practically a payment to the State, and was so intended and understood by all parties in interest. Respondent says that from the time said law went into practical operation, to the period the Bank of Tennessee ceased to exist, the latter received said deposits from respondent for and on behalf of the State—and the same with the moneys received on that account from the other railroad companies was placed to the credit of the State, 58
together with moneys received from other sources—all of which—in one common fund, was used by the bank in the payment of interest on any and all the bonds of the State, without regard to the purpose for which they were issued; that said bank at no time held such deposit or payment on account, or to the credit of the companies so paying it, or subject to their order or disposition, nor in any other capacity than as the agent and depository of the State. Respondent asks leave to produce upon the hearing a properly authenticated 59
copy of said act.

The payment of the principal of said bonds contemplated by and provided for in said act, was, as aforesaid, not a payment by said companies to the holders thereof, but a provision by said companies through a sinking fund of an amount sufficient to pay said bonds at their maturity or before that time. The seventh section of said act provided that at the end of five years after the completion of their road, said company 60
shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the Treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, and as between the State and said

61 company the bonds so paid in shall be a credit on the bonds issued to the company. And bonds so paid in, and the interest accruing thereon from time to time, shall be held and used by the State as a sinking fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be a credit as aforesaid, and shall be cancelled. And should said company fail to comply with the provisions of this section, it shall be proceded against as
62 provided in the fifth section of said act.

It will thus be seen that the only payment required by said act, on the part of said companies, was *a payment to the State alone* and for its security and indemnity against loss on account of her bonds issued to said companies aforesaid. The Legislature evidently supposed that the various companies so receiving State aid would complete their respective roads very rapidly, having, through subscriptions for stock and the sale of
63 bonds received from the State, adequate funds in hand for that purpose. Five years after their completion, the payments to the sinking fund was to begin ; and as the sinking fund was with a view of providing a sum sufficient to pay the principal of said bonds at their maturity, it was, of course, the belief of the Legislature that the payment of the one per cent. per annum from the time indicated in said section would answer the purpose for which said sinking fund was created. And a simple calculation will show that they were not wrong
64 in so supposing. Respondent says, therefore, that from a proper construction of the sections of said acts hereinbefore referred to, that the holders of State bonds issued under said Internal Improvement Act had no lien or mortgage on the property of said companies, and that the State of Tennessee, in reserving the same, did so, not as trustee, nor in any other fiduciary capacity, for or on account of said bondholders, but for her

sole indemnity, benefit and security. Not only is this 65
evident from the sections of said act creating said lien or mortgage, and those with reference to the payment of the interest and the creation of the sinking fund for the purposes aforesaid, but this view is further fortified and made certain by a reference to and construction of other sections of said act, and also by a reference to and construction of other acts prior thereto and of acts subsequent to said Internal Improvement Act, as also by the conduct and dealings of the State of Tennessee with Respondent and the other 66
companies receiving bonds under said act of February 11, 1852, and acts amendatory thereof.

Responent, further answering, says, that the first section of said act, which, as above stated, set forth in detail the terms, conditions and limitations, upon which the Governor of the State should issue the bonds aforesaid to the companies aforesaid, and the amount per mile, provides, among other things already specified and not now necessary further to be enumerated, that 67
before the issuance of said bonds, it should be shown by said company to the Governor, with reference to the first section, then graded, bridged and prepared for the iron rails, "*that said section or any part thereof is not subject to any lien whatever other than that created in favor of the State by the acts of* 1851-2." There are two acts of the Legislature of that session prior to the Internal Improvement Act of February 11th, 1852, which grant aid to railroad companies; viz: The act of January 15th, 1852, authorizing and in- 68
structing the Governor of the State to issue not exceeding three hundred thousand dollars of coupon bonds of the State, to aid the East Tennessee and Virginia Railroad Company in the construction of bridges on their road, upon the terms and limitations prescribed in said act; and the act of February 4th, 1852, which is entitled an act to aid in the completion of the East

Tennessee and Georgia Railroad, and which authorizes and requires the Governor to issue to said road coupon bonds of the State of Tennessee sufficient to pay for the construction of a bridge across the Tennessee river, not to exceed one hundred thousand dollars. By the terms of the first of these acts a lien or mortgage was expressly reserved. Respondent calls attention to the language used in the creation of said lien or mortgage, which is as follows, viz.:

SEC. 3. *Be it enacted*, That as soon as the bonds are issued for the first section of forty miles, as provided in the first section of this act, the said bonds on the issuance thereof shall constitute a lien upon all the stock of said company, upon the road-bed, masonry, bridges and other property of said company, and *the State shall be invested with such lien on, and by virtue of the issuance of said bonds without a deed from the company* for the payment of said bonds and interest accruing thereon. And whenever the bonds are issued for either or both of said sections of forty miles as specified in the first section of this act, the State of Tennessee shall, on and by virtue of the issuance of said bonds, be invested with a like lien or mortgage on said sections for the payment of said bonds and the interest thereon, including road-bed, masonry and bridges on all of the said sections provided for in this act, and on all the stock of said company, without a deed from the company, and said lien or mortgage shall have priority over all other claims against said company, and all liens created by the company after the issuance of the bonds for the first forty miles of said railroad shall be void *as to the liens of the State of Tennessee hereby created* for the payment of the bonds issued under the provisions of this act, and the accruing interest thereon, and the said *liens of the State* shall extend to and embrace the entire railroad, its superstructure and equipments, after completed, and so continue until said bonds and interest thereon are paid off and discharged, and without a deed from the company.

Respondent, further answering, calls attention to the 73
language of the said act of February 4th, 1852, creating said lien or mortgage, which is as follows:

*Be it enacted*, That the express conditions on which any bonds under this act shall be issued to said company are, that upon the issuance of said bonds the said railroad and bridge, with all the appurtenances thereto belonging, and the interest of the individual stockholders therein, and the tolls, issues and profits of said road and bridge, shall be, and is by force of this act, 74
*vested in the State for the security of the State*, against the payment of the bonds issued under this act, and the interest thereon; and the State is hereby declared to be vested with all the right to have and hold upon the issuance of the bonds authorized by this act, the entire road and bridge, and all the appurtenances thereto belonging, and all the tolls, issues and profits of the stock, for the security of the payment of said bonds and the interest thereon accruing as a mortgage to secure the payment of the same, and said road and 75
all its appurtenances of every kind and description shall be subject to any law that has been or may hereafter be passed for the enforcement of mortgages in like cases.

Respondent avers that it is to the liens created by the said acts of January 15th, 1852, and of February 4th, 1852, to which the clause above quoted of the first section of the act of February 11th, 1852, has reference, and it calls attention to the fact that the language of 76
the third section of said act of January 15th, 1852, creating said lien, and which is set forth above, is substantially, and almost literally, the same as the third and fourth sections of said act of February 11th, 1852, which complainant alleges creates a lien on the property of said companies in favor of the holders of the bonds issued by virtue of and under said act. But the

said clause of the first section of the act of February 11th, 1852, declares that the lien reserved by the said act of January 15th, 1852, is a *lien in favor of the State*. Respondent therefore submits that the proper construction of the clause aforesaid and a comparison of said section three of act of January 15th, with sections three and four of the act of February 11th, 1852, is a conclusive Legislative declaration on the very face of the act under which complainant and his associates claim title, that the claim of complainant is unfonnded, and that the lien reserved by said act was a lien in favor of and for the benefit of the State alone.

Respondent says that the 3d section of the act of February 4, 1852, above set forth, in express terms declares the lien or mortgage thereby reserved and secured to be "*rested in the State for the security of the State.*" The idea that the holders of the bonds issued under said act are *cestui que trusts* having any interest in or claim upon the property embraced in said lien, is expressly negatived—or that the State occupies any trust relation whatever towards said bondholders, or that they have any collateral or other security beyond the solemn promise of the State to pay according to the the tenor of her bond. Said clause of the 1st section of the act of February 11, 1852, declares virtually that the lien herein created is in substance and effect the same as that created by said act of January 15, 1882, viz: *in favor of the State and for the security of the State.* Respondent therefore submits that said acts of January 15th and February 4th, 1852, above set forth, being referred to by said clause of 1st section of the act of February 11, 1852, became a part of said act, as fully as though they had been incorporated therein, and all holders of bonds under said act, including complainant, are charged with notice thereof. And respondent submits, that when so taken and construed together, they are a plain legislative declaration that the lien or

mortgage reserved in said act of Febraary 11, 1852, was 81
personal to the State, for the benefit of the State alone, and that the bondholders had no interest in and could hope for no benefit from the same. Respondent asks leave to produce duly authenticated copies of said acts upon the hearing, and that the same may be considered, as fully as though set forth at large herein.

Respondent, further answering, says that the 2d section of said act of February 11, 1852, provides that the bonds so to be issued under the 1st section of said act 82
shall not be used for any other purpose by said companies than for procuring the iron rails, chairs, spikes and equipments for said section of said road, and for putting down said iron rails; and the Governor shall not issue the same unless upon the affidavit of said president and a resolution of a majority of the board of directors, for the time being, that said bonds shall not be used for any other purpose than for procuring the said iron rails, chairs, spikes and equipments for said section, and for putting down said iron rails; and 83
the Governor shall have power to appoint a commissioner to act under oath in conjunction with said president in negotiating said bonds for the purposes aforesaid, and to act in any other matters pertaining to said company, when the *interest of the State*, in the opinion of the Governor, may require it. It avers that said section, taken in connection with section 1, already set forth, clearly shows an anxious desire on the part of the Legislature to throw such safeguards around the issue and use of said bonds as would make their appli- 84
cation to the purposes contemplated by said act absolutely certain. Not only were the companies compelled to show, by statements and affidavits of their presidents, boards of directors and chief engineers, that the required subscription of stock had been made, and the prescribed section of said roads in the requisite state of preparation, but, as an additional precaution, the

85 Governor was authorized to appoint a commissioner *to represent the State and protect her interests* in all matters growing out of the issues of bonds to said companies under said act. But in guarding interests existing thereunder, and protecting them from threatened or possible injury, no interest is spoken of or alluded to *save the interest of the State;* nor is any allusion made to any supposed interest of the purchasers of said bonds, nor to the protection of any rights or interests of theirs. The Legislature, in this section, in harmony
86 with what respondent has shown was their intent and purpose in sections 3, 4, 5 and 7 of said act, did not guard, or attempt to guard, any supposed interest of the holders of said bonds, for the reason that they had no rights or interest that could be jeopardized or in any way affected by reason of the improvident issue of said bonds, or the misapplication of the proceeds of the same when sold. The State of Tennessee, however, could only hope for reimbursement from the companies to whom she had loaned her bonds, in the event said
87 companies were in condition to perform, and did perform, and comply with the requirements of said act; hence the precautions taken herein and elsewhere in said act.

Respondent says, that, having in view this necessity for guarding at every step the *interests of the State*, and in order to keep the Governor and Legislature thoroughly informed as to the internal workings and operations of said roads, and as to their present and
88 prospective condition, section 8 of said act enacted: "That the president of the company shall make semi-annual reports, under oath, to the Governor, until the completion of said road, setting forth fully the condition of the road and of the company; and after its completion, he shall report to the Governor annually, showing the financial condition of the company, giving a statement of the trade and travel upon the road, the

receipts and expenditures, net earnings and dividends, 89
and what per cent. is paid on the stock to the stockholders; and said reports shall be consolidated every two years by the president of said company, and said consolidated reports shall be laid before the Governor by the first of September every two years after the completion of said road, and the Governor shall lay said report before the Legislature for its action at the next meeting thereof after said report is made."

And in order to enable the State to act promptly and 90
effectively, in case the reports called for and required by the foregoing section should show the condition of any or all of said companies to be unsatisfactory, or any other unforeseen contingency should arise tending to the injury of the State's interests arising under said act, section 12 of said act provided: "That the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed necessary to protect *the interest of the State* and to *secure the State against any loss in consequence* 91
*of the issuance of bonds under the provisions of this act*, but in such manner as not to impair the vested rights of the stockholders of the companies."

Respondent alleges that the provisions of said section 12 are utterly inconsistent with and antagonistic to the theory of complainant, that the lien reserved by said act was for the security of the bondholders, and that as to them the State of Tennessee was a mere trustee, holding said lien for their benefit. It does not 92
seem credible that if, as complainant alleges, the lien created by said act run with the bonds issued thereunder, and was intended to inspire confidence in capitalists, and assist their sale and increase their value in the market, such powers would have been reserved by the Legislature. The bonds, it is alleged were purchased on the faith of the security and indemnity of-

93 fered by the lien aforesaid; and yet it is held by so slender a tenure that the Legislature may weaken, modify or destroy it with a breath. So far, however, from this construction of complainant being true and correct, respondent avers that the object of said section 12 was just what its terms import. It was manifest to the Legislature that conditions and contingencies, seen and unforeseen, might arise, under which the State of Tennessee would find it to to her interest to require additional guarantees, or to impose additional regula-
94 tions and restrictions, or to modify or annul those in existence by virtue of said act, or to increase the sinking fund therein provided, and so shorten the period in which said companies were to provide for the payment of said bonds, or summarily to wind up and end altogether her connection with them by requiring them to pay into the State Treasury or otherwise a sum sufficient to redeem said bonds. Hence, the Legislature reserved to themselves the most absolute power and control over said companies, and the free and un-
95 restricted right of legislating untrammeled by the fetters of previous contracts or constitutional prohibitions. The only curb upon the State's power and control over said companies and their property was in favor of the vested rights of their stockholders, which were not to be impaired by any subsequent legislation. With this limitation, the Legislature reserved the right to pass any law that in their judgment was demanded by considerations of public policy, *in the interest of the State, and to protect the State against loss*, in consequence of
96 the issuance of bonds under the provisions of said act.

Respondent asserts and charges, after a careful review of the said act of February 11, 1852, that whilst, as already shown at every turn, allusions are made to the lien of *the State*, and as being reserved and secured for the benefit of the State, and for the security of the State, and to secure the State against loss by reason of the is-

suance; and whilst the interests of the State are sedul- 97
ously kept in view and made one of the chief objective points of said act, nowhere in said act is anything said as to the lien of the bondholders, nor that the same was intended for their benefit, nor that they had any interest therein. Nor is any effort made to protect such supposed interests, nor to secure them against loss or damage by reason of the purchase of said bonds.

Respondent charges that the construction placed by it on the act of February 11, 1852, as above set forth, is 98
the one upon which subsequent Legislatures of the State have based their action from time to time, and up to the years 1869-70, when they finally severed the State's connection with the railroad companies receiving aid under the said act, by legislative enactments, which will be more particularly hereinafter referred to. And further, that the State officials, whose duty it was to carry into effect the provisions of said act, as evidenced by their official acts, declarations and course of conduct, extending over a period of more than twenty 99
years, have so construed, regarded and acted upon it. In this connection, respondent will call attention to said acts and doings somewhat in detail.

Respondent concedes, as aforesaid, that the act of February 8, 1854, increased the amount of State bonds which were to be issued the several companies enumerated in the act of February 11, 1852, from eight thousand to ten thousand dollars per mile. Respondent submits that the fact of so increasing the amount was of 100
itself a claim by the Legislature of exclusive and unlimited control over the lien or mortgage reserved and secured by said act of February 11, 1852, and that the same was for the exclusive benefit and indemnity of the State of Tennessee. If the same had been intended, as complainant alleges, as a security for the payment of said bonds, then it would have been an infringement

101 upon the rights of the holders thereof to have increased the charges upon the property liable to indemnify them against loss. Said act of February 8, 1854, also provided for the issuance of bonds of the State to the various companies entitled to aid under the act of February 11, 1852, for bridge purposes to the maximum amount allowed to be issued under said act of February 4, 1852, to aid in the completion of the East Tennessee and Georgia Railroad, and upon the terms and conditions mentioned in said act (except the second section, which
102 relates to the sinking fund for the payment of principal and interest of the bonds issued under said act), and also in the fifth and sixth sections of an act passed February 26, 1852, entitled "An act to charter the Chattanooga, Blue Spring and Cleveland Railroad Company, and for other purposes. This was a legitimate exercise of power by the Legislature only upon the assumption that said lien or mortgage created by the act of February 11, 1852, as aforesaid, was the sole property of the State. It would have been a violation
103 of the rights and an impairment of the security, upon the faith of which complainant alleges he and others bought their bonds to have issued new bonds, and as a security for their ultimate payment with the interest thereon, reserved a lien and mortgage on said railroads, and for the sole benefit of the State and paramount to all claims and encumbrances, when the very same property was already charged with a lien or mortgage in favor of such bondholders.

104 Respondent alleges that the lien or mortgage reserved in said acts of February 4, 1852, and of February 8, 1854, does not differ in its legal intendment and effect from the lien or mortgage secured by the act of Febuary 11, 1852, and that both are for the sole benefit of the State of Tennessee as before stated. Said first named acts declare it to be a lien and mortgage vesting in the State for the *security of the State.*

Respondent admits the legislature of the State passed 105
an act of February 21, 1856, of which Exhibit D of complainant's bill is conceded to be a correct copy, requiring the several railroad companies who had received, or who might thereafter receive, bonds of the State to aid in the construction of their several roads under the provisions of said Internal Improvement Act of February 11, 1852, and the acts amendatory thereto, at the expiration of five years from the issuance of their several bonds, to set apart and pay over to the Treasurer of the State *two per cent. per annum* 106
upon all bonds which had been, or might thereafter be, issued as aforesaid, as a sinking fund for the ultimate redemption of the bonds issued as aforesaid, and that when so paid over the Governor, Comptroller of the Treasury, and President of the Bank of Tennessee, who were thereby constituted a board of commissioners for the management, government and control of said sinking fund, should invest in the bonds of the State and re-invest all accruing interest in like securities. 107

Respondent further admits that said legislature, on the 20th of March, 1860, passed an act entited "An Act to provide for the equalization and investment of the sinking fund on the bonds issued to or endorsed for railroads in this State." Said act provided "That the money or bonds that have heretofore, or may be paid by the cities or railroad companies of this State, to the sinking fund commissioners by the 1st of January, 1860, together with the accruing interest thereon to 108
that date, shall be passed directly to the credit of the party having so paid the same, and to be a release to said party for that amount on the debt due by them to the State of Tennessee; that said bonds should be cancelled by said commissioners, and if endorsed bonds, returned to the company issuing the same; and if State bonds, filed in the office of the Secretary of State."

109 Said act required the railroad companies aforesaid to pay two and one-half per cent. per annum on the amount of bonds so received by them as a sinking fund, and that said companies might pay said sinking fund in cash or in like character of bonds that may have been issued or endorsed by the State for said company, at their face or par value; that if said sinking fund was paid in money, the commissioners should invest it immediately in bonds of the State, and have the same cancelled and filed as heretofore provided.
110 Such bonds were to be of the same character as those issued to said company.

It was further provided, that the sinking fund, when paid, in all cases, should *be passed directly to the credit of said company, and be a release to said company from that amount due by them to the State* and that each company should provide the interest semi-annually, as now provided by law, on the amount of bonds unpaid at the time the said interest falls due,
111 and not on the original amount issued, as heretofore provided. It was also made the duty of the Comptroller to keep a regular account against each company, charging them with the amount of bonds originally issued to it by the State, and crediting them by the amount of the sinking fund paid, and he was required to furnish the Treasurer of the State with a statement of the amount due by each company on the 1st of June and December of each year, that he might know how much interest each companyhad to pay.
112

Said act was declared to be in full force from and after its passage, and repealed all laws in conflict with it.

Respondent does contend as charged by complainant in his bill, and does verily believe that the said acts of February 26, 1856, and of March 20, 1860, contemplated

that a payment of said companies of the per centum on 113
the bonds originally issued, as aforesaid, into said sinking fund should constitute a payment *pro tanto* of the debt due by said companies by the State on account of said loan of bonds, and to that extent lessened the lien or mortgage on their said roads; and that when said sinking fund had accumulated a sum equal to the aggregate amount of said bonds originally loaned to said company by the State, the same was a payment and satisfaction of said loan, and a discharge of said lien or mortgage. Said last mentioned acts were passed in 114
pursuance of the reserved rights of the Legislature, under the terms and provisions of the 12th section of the act of February 11, 1852. The first of these acts increased twofold the per centum on said bonds that said companies were required to pay into said sinking fund, and required the payment to begin in five years from the issuance of the bonds, instead of five years from the completion of said roads, as provided in the 6th (the sinking fund) section of the said Internal Improvement Act of February 11, 1852, and, in the event of fail- 115
ure to comply with the requirements of said act, authorized a sale of the road. These changes were additional burdens upon said companies, and were only valid and obligatory upon them on the assumption that the said provisions affected the *interests of State.* The second of said acts (the act of March 20, 1860,) makes important changes again with reference to said sinking fund, and simplifies the method upon which it is to be conducted. It declares that the sinking fund and its accumulations up to the 1st of January, 1860, should be 116
passed directly to the credit of the company paying it in, and be a release for that amount on the debt due by them to the State of Tennessee, and that the two and a half per cent. on amount of bonds loaned, when paid in, should also be a credit and payment *pro tanto* of the State. The debt which said companies owe is here declared *to be a debt due the State of Tennessee.* No in-

117 timation is given that said debt is due and owing to the bondholder. The State, through her Legislature, here deals in her sovereign capacity with a debt due her alone, and legislates upon a subject affecting her interests, as she had expressly reserved the right to do, and that, too, in a manner negating and hostile to complainant's alleged rights.

Respondent further shows, that on the 1st February, 1861, the Legislature of said State suspended for one
118 year so much of the said act of March 20, 1860, as required said companies to pay two and one half per cent. per annum on the amount of bonds so issued to them; and afterwards, on the 7th of May, 1861, they passed an act, authorizing the Governor, at his discretion, to appoint a receiver, or allow the management and control of said companies to remain in the hands of their officers, *as the interests of the State might suggest.* This was the last legislation on the subject prior to the outbreak of the late civil war.

119 Up to this time, as before stated, the credit of the State was above suspicion, and there was no doubt in the minds of the Legislature or people as to her entire ability and perfect willingness to pay her obligations.

Respondent avers that these last mentioned acts, suspending the payment of the sinking fund and authorizing the Governor to appoint receivers to take possession of said roads, were both in line and keeping with the uniform construction which the State, through her
120 Legislatures, had placed upon the act of February 11, 1852, and the lien or mortgage retained therein. Upon the assumption of complainant, the provisions of said act were for the benefit of the bondholders, and the State was a bare trustee, and any attempt to relieve said companies from their obligations to pay into the sinking fund the amount fixed by statute, was an invasion of the rights of such bondholders, impaired the obligation of their contract, and was null and void.

Respondent further charges that the assertion by 121
said Legislature of the right to take possession of, and control the said railroads *in advance* of any default by said companies, was also, in this view, a usurpation of power, and violation of the rights of said companies. But upon the theory heretofore set forth by this respondent, upon which the State acted, said legislation was, although radical in its character, strictly within the powers reserved in said sec. 12 of the act of February 11, 1852.

122

Respondent further answering, says that no interest was paid by the State upon any of her bonded debt during the continuance of said war, but immediately thereafter her Legislature convened, and among the first subjects of consideration, was the means of providing for the payment or settlement of the past due interest on that part of said debt, created under the act of February, 1852.

On the 23d of November, 1865, an act was passed, the 123
title of which explains its purpose, and is as follows: An act to amend an act entitled "An act to establish a system of Internal Improvements in this State," passed the 11th of February, 1852. This act instructed the Governor to issue six per cent. coupon bonds of the State, similar in character in every respect to the bonds issued under the act of February 11, 1852, and maturing at the same time, to an amount sufficient to pay off all the bonds and interest past due, as well as that to fall due January 1, 1866, or any bonds that may fall 124
due during the year 1867, etc., and further provided that the amount of interest then due, or that became due by Janury 1, 1866, by any railroad company to the State on bonds issued or endorsed for said company, should be charged up to said company on the same terms and conditions of the original loan, and that the State should have the same lien upon each of said roads,

their franchiess and property, for the prompt and faithful payment of the principal and interest of the bonds hereby authorized to be issued to pay the interest on the bonds said company should have paid interest on, or it has under the law this intended to amend, for the bonds issued under that law.

It was further therein enacted, that the company so receiving aid under said act, should pay the interest on said bond as it matured, in the same manner and under the same rules, regulations and restrictions as were then prescribed as to bonds issued under the act of February 11, 1852; and that the law now requiring all railroad companies in this State to pay into the Treasury two and one-half per cent. per annum as a sinking fund, on the amount of *their indebtedness to the State, be and the same is hereby suspended until January* 1, 1867, *and said companies are relieved from the payment of the sinking fund now past due under said laws;* and it was made obligatory on each of said companies to pay *four per cent.* during the year 1867, into the sinking fund "*on the amount of its indebtedness to the State,*" to be paid in bonds of the State of like character to those issued to said company, and a like amount every year thereafter, *until the whole of their indebtedness is discharged.*

Respondent submits that this act is still another legislative construction of the said act of February 11, 1852, and an explicit declaration that the only debt due and owing by said companies is an indebtednes to the State.

At this time, all of said companies had failed to pay in, and were in arrears with the sinking fund more than four years. The Legislature regarded them as *solely* debtors to the State; treated with them upon that basis, and *ex gratia* released them from the obligation

of paying the amounts so past due and owing to said 129
sinking fund. Instead of enforcing the remedies of seizure and sequestration which the 5th section of said act of February 11, 1852, gave the State to secure payment of the interest falling due on the bonds loaned said companies, the Legislature saw proper to charge up said past-due interest to said companies, retaining the same liens which said act of February 11, 1852, gave and secured to the State, and authorized the issuance of new bonds sufficient to pay such past-due interest; thus of their own motion, and without con- 130
sulting the said bondholders, waiving the rights of the State to an immediate payment, and issuing new interest-bearing bonds, and securing herself against loss upon these bonds by retaining the same lien upon the same property which was charged by said act of February 11, 1852, and which complainant now claims was for his exclusive benefit.

Further answering, respondent shows that on the 7th
of December, 1867, the Legislature of the State passed 131
an act which, among other things, declared that if any of the several railroad companies to whom the bonds of the State have been loaned, shall fail for two consecutive years to pay the interest that may accrue upon the bonds loaned to them severally, then and in that case the Governor, Secretary of State, and Comptroller may, at their discretion, sell said railroad, upon such terms as they may deem best to secure the *interests of the State*, and shall retain of the proceeds of such sale the
amounts loaned to said companies and the interest due 132
on the same. This act was an important innovation upon the act of February 11, 1852, and announced a new departure in the policy of the State with reference to defaulting railroad companies. Under the provisions of the Internal Improvement Act of 1852, the only step that could be taken, as has already been shown, in the event of a failure on the part of said companies to pro-

133 vide, in the method therein set forth, an amount sufficient to pay the interest on said bonds, was to appoint a receiver and sequestrate the tolls and profits of such defaulting road or roads, until the receiver had thus collected an amount sufficient to pay said interest, in which event the road was to be returned to the company. This, whilst amply sufficient at and for a great while after its enactment to protect the State against loss, was found, under the new order of things, together with the losses and deterioration during and resulting
134 from the late war, to be utterly ineffective for the purpose to be attained. The State had found herself compelled to appoint receivers and take charge of several of the railroads to whom she had loaned her bonds, and who had failed to provide for the interest on the same. So far from being able to procure the sum requisite to reimburse her for the interest she had paid, or provide for that falling due, on said bonds, said roads, under the management of State officials, failed to pay current expenses, and became an additional tax and burthen. In
135 this aspect of affairs, the State determined to place herself in a position enabling her to sell said defaulting roads outright. The above mentioned act was the result.

This act, as did all former acts, when treating or dealing with the lien or mortgage on the roads of said companies, evidently regarded the same as being to protect and secure the State alone, and legislated by virtue of its reserved powers as aforesaid. Had said lien been as
136 complainant claims, retained for the security and profection of the bondholders aforesaid, the said act would have been like many of its predecessors on the same subject, unconstitutional and void.

Respondent shows, that whilst the Legislature of the State were enacting vigorous measures to enforce a compliance by said railroad companies with the con-

tract into which they had entered under the Internal 137
Improvement Acts aforesaid, or in default foreclose at once, and finally the lien of the State by sale, they did not at that time abandon the policy inaugurated many years before, but by various acts, not now necesary to be now set out in detail, gave additional aid to nearly all the companies who were beneficiaries under the acts of February 11, 1852, by again loaning them the bonds of the State to an amount aggregating many millions of dollars, and reserving and restraining the same lien and security enuring to the State under said 138
act of February 11, 1852. These bonds were put upon the market and sold. Respondent asks leave to produce duly authorized and certified copies of said acts. Respondent refers to and relies upon these acts, in conjunction with those heretofore mentioned, among other things, as showing the uniform construction placed upon said act of February 11, 1852, to be as set forth by respondent. Respondent further alleges, upon information and belief, that these last mentioned bonds were negotiated and sold as aforesaid in the city of 139
New York, where complainant then and there ever since resided. That they were quoted daily through a series of years as new bonds of the State, and upon their face showed they were issued as aforesaid and under the act of February 11, 1852. It was a fact of public notoriety in said city, and complainant must have known, and the respondent charges, upon information and belief, did know the terms and conditions upon which said bonds were issued, and that they asserted a claim of lien or mortgage by the State as 140
security against loss, upon the same property as that which he now seeks to subject to the payment of his bonds before issued.

Respondent further answering, says it admits that the Legislature of the State of Tennessee passed an act on the 25th day of February, 1869, and on the 5th day

of July, 1870, passed an act amendatory thereof, by the terms and provisions of which the respondent, and all railroads which had received State aid under and by virtue of the act of February 11, 1852, and succeeding acts amending the same, and which owed the State, by reason of her bonds by her loaned to them as aforesaid, were authorized to repay said State the several amounts, or any part thereof, then due on that behalf in any of her bonds without regard to series or number. Said payment, when so made to the full amount due and owing by said companies, or either of them, to be a complete and final discharge of the companies paying, from all further liability on account of bonds loaned as aforesaid under said Internal Improvement Acts, and part payment only was made, then such payment was to be a satisfaction and discharge of said companies *pro tanto*. The said railroad companies, including this respondent, were thereby further authorized and empowered to issue their bonds payable at a time not more remote than the period fixed in the bonds so paid in and cancelled under the provisions of said acts, and of equal amount and denomination therewith. Said bonds were to be substituted and subrogated to all the rights, securities, liens, and mortgages held by said State under and by virtue of said Internal Improvement Acts, together with all the remedies of sequestration and foreclosure conferred upon said State by said acts. Said railroad bonds were to be certified to by the Comptroller of said State, and to be by him entered in a book to be kept for that purpose, with date, number, and amount. Said certificate was required to be upon the face of each of said substitution bonds, and was required to recite and set forth that said bond was executed and issued, and by virtue of law takes the place of a bond of the State, and that the same is a *first mortgage bond*. Said acts also provide that by and with the consent of the board of Directors of said railroad companies, that any person or corpora-

tion, by paying the indebtedness of such railroad com- 145
pany to the State in the bonds of the State at par, as provided therein, should be substituted and entitled to all the liens which said State had, and that the Governor and Secretary of State should give such person or corporation a certificate showing the facts, which should be evidence against said companies of such indebtedness.

Respondent does not admit the exhibits attached to complainant's bill which purport to be true copies of 146
said act to be so in fact, but will produce, at the hearing hereof, properly authenticated copies of the same.

Respondent further shows, that on the 27th day of March, 1876, it made and executed in due form of law a mortgage upon its property and franchises to G. B. Lamar, Alexander M. Clayton and F. W. Smith, as trustees, to secure the payment, at the times and in the manner therein stipulated, of six hundred thousand dollars of its bonds, bearing seven per cent. interest, 147
executed cotemporaneously therewith, and known as first mortgage bonds; that afterwards, and on the 1st day of January, 1860, it made and executed in due form its mortgage upon its net income to F. W. Smith and Alexander M. Clayton, to secure the payment of three hundred thousand dollars of its bonds, issued cotemporaneously therewith; that on the 26th day of June, 1866, it was largely in arrears to the holders of said bonds on account of interest due and unpaid, and also owed a considerable floating debt, which was unse- 148
cured; being desirous of arranging the same upon a proper footing, agreeable to the wishes of all parties in interest, it, on the day aforesaid, made and executed another mortgage to said Alexander M. Clayton and F. W. Smith, as trustees, to secure the payment according to their tenor and effect of one million three hundred thousand dollars in its bonds, which were executed

147 cotemporaneously therewith. These last named bonds were to be delivered to the holders of the bonds and coupons issued under the provisions of said first and income mortgages, to be held as collateral security, but with the understanding and agreement that no steps were to be taken towards a foreclosure of said mortgages by parties accepting these new bonds, so long as interest was paid according to the terms of said last named mortgages, unless some of all the holders of said first mortgage and income bonds should refuse to ac-
150 cept the new bonds under the above arrangement, and should successfully foreclose under said first and income mortgages, in which event the holders who had accepted as aforesaid were to have their bonds returned, and were remitted to all their rights thereunder. Under this mortgage two hundred and seventy-two thousand dollars of coupons of said first mortgage bonds were funded, and nine hundred and eighty-three thousand dollars of said bonds were issued in funding other debts and obligations of respondent.

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Respondent further shows, that it has nine and eight-tenths miles of its road in said State of Tennessee, and that each and all said mortgages recognize the superior lien of the said State upon that portion of the road in Tennessee, and said mortgages are declared to be subordinate thereto. Respondent further shows that its Board of Directors, regarding it as for the best interests of the road to pay off and discharge this debt, which respondent owed the State of Tennessee on ac-
152 count of the loan of her bonds as aforesaid, and at the same time to readjust and consolidate its bonded debt, caused to be executed on the 30th day of July, 1877, a mortgage or deed in trust to the Central Trust Company of New York, to secure the payment of two millions one hundred thousand dollars of its bonds to be issued upon the same date.

The said mortgage provided that said bonds should 153
be numbered from one to twenty-one hundred inclusive, and should be for one thousand dollars each; and the bonds numbered from one to one thousand should constitute series "A," and should be a first mortgage upon the property and franchises of respondent, and the remainder of said bonds should constitute series "B," and should be a second mortgage thereon.

Both series, so far as necessary, were to be sold, and the proceeds applied to the purchase of bonds and 154
coupons of the State of Tennessee, to be used in payment of the sum due her on account of the loan of her bonds as aforesaid, and in satisfaction and discharge of the lien retained by her as aforesaid; and the balance, if any, of said bonds were to be applied to the betterment of the road in the particulars therein specified.

Respondent shows to the Court that it, with the concurrence of said trustee, used a large number of said bonds in the purchase of bonds and coupons of the 155
State, to the amount of two hundred and ninety-nine thousand eight hundred and fourteen dollars, and on the 16th day of January, 1878, paid the same to said State in full and final settlement, payment and discharge of all claim and lien held by her upon the property of respondent, on account of loans under the Internal Improvement Laws aforesaid, taking said State's receipt and acquittance and full discharge therefor, which is herewith filed, marked Exhibit No. 1, and prayed to be taken as part of this answer. 156

Respondent avers that it purchased said State bonds and coupons in open market in said City of New York, at their current prices. There was but little if any difference in the value of the various series of said bonds at that time, and it purchased any bonds coming under the requirements of said acts of 1869–70.

157 Respondent further shows that its bonds which were issued on the 30th of July, 1877, secured as aforesaid by a first mortgage on its road and other property, were to a very large extent publicly advertised, offered for sale, and sold upon the market in said City of New York, after the settlement aforesaid between the State of Tennessee and it, and its full payment of all indebtedness to her on account of the loan of her bonds as aforesaid, and final release and discharge of all liens or other incumbrances upon its said property, to bona fide
158 purchasers, for value, without notice of the claim now sought to be set up and maintained by complainant and his associates, and in the full and honest belief and upon the faith that the security aforesaid was valid and paramount to all other claims upon said property franchises, etc., and that the acts of 1869-70, aforesaid, were in all respects within the scope of the legislative powers of said State, and in total ignorance that complainant or any other holder of the State bonds originally loaned to it had or would make any claim of the
159 character now asserted in the bill filed herein.

Respondent avers that it, in its settlements, payment and other dealings under the said acts of 1869-70 with the State aforesaid, and in the sale of its said bonds, as above set forth, it acted bona fide, and under the implicit belief that the lien or mortgage vested in the State as aforesaid under the acts of Internal Improvement before mentioned, was solely for the benefit and security of the State, and in total ignorance of any
160 alleged right or claim on the part of holders of Tennessee bonds issued in aid of respondent. It verily believed then, as now, that the only liability it had assumed was to the State, as hereinbefore set forth, and that the legislation aforesaid, authorizing a settlement by it with the State, was in all respects valid and binding.

Respondent concedes it claims, in view of these facts 161
that it has fully complied with the provisions of these acts, and that it and its property are released and discharged from all obligation to the State. It further claims, that it was never, as it is informed and believes, under any obligation to the holders of the State bonds loaned to it as aforesaid, but submits that, even if it was so, such liability, by reason of the premises, no longer exists. Respondent denies, so far as the Mississippi and Tennessee Railroad is concerned, and upon information and belief as to the other roads, that 162
their officials conceived the project of avoiding any liability to complainants, or any one else, on account of said loan of bonds by the State, or that they applied themselves to the procurement of any legislation whatever to the detriment of complainants or other bondholders.

Respndent is not familiar with the circumstances attending the passage of said acts of 1869-70, and hence is unable to say whether the same as finally passed 163
differed, and if so, in what respect, from the draft of the bill as originally introduced. It is not improbable that one or both of said acts were amended in the course of their passage, though as to all this respondent has no knowledge; and if the same can in any way be material, calls for the proof. Respondent did not at this time, nor for many years thereafter, know that said bondholders asserted any claim to the lien aforesaid, nor did it then, nor does it now believe that the same has any existence in law. It therefore emphatically 164
denies that it knew it was attempting to wrest from said bondholders any lien or other security upon the property of said Mississippi and Tennessee Railroad Company which was conferred by said Internal Improvement acts, for the payment of interest and principal of their said bonds. Respondent denies that it is fraudulently pretending, as asserted by complainant,

165 that the Mississippi and Tennessee railroad has been released from liability as aforesaid, but says it verily believes that the acts aforesaid are in all respects constitutional and valid, and the action of respondent thereunder *bona fide* and alone upon the considerations before mentioned. Respondent avers that said acts of 1869–70 are in no sense variant from the general tenor of various acts antecedent thereto, to which it has already referred, all of which assumed the complete and sole ownership of said lien to be in the State and for
166 her indemnity alone. They attempted to do nothing more than was done by the acts of March 20, 1860, and November 23, 1865, which as before stated in express terms, provided that a payment to the sinking fund in State bonds of a *like character* with those loaned should be a discharge for so much to the company so paying, and when the full amount was so paid it was to operate as a discharge *in toto*. Respondent submits that under the 12th section of the act of February 11, 1852, the Legislature had full power to increase the annual
167 amount to be paid in to said sinking fund, as was repeatedly done, and to declare, as they did, that such payments should operate as a discharge of said lien *pro tanto*, and that the acts of 1869–70 were practically but a consistent exercise of the same reserved rights and powers in the interest of the State.

Respondent admits that there is a clause of the act of February 25, 1869, which declares that the passage of said act shall not affect the interest of the bondholders
168 of the State; but respondent denies the construction placed thereon by complainant, and avers that this provision simply meant to reaffirm the liability of the State to them, or possibly was inserted by way of amendment, without thought, at the suggestion of some member. This provision was obviously not intended to set at naught the plain declarations and provisions of said act as to the State's exclusive property in said

lien and right to disposition of the same, and certainly 169
cannot be tortured into the conferring of any new rights
which were not before in existence.

Respondent also admits that the act of January 20, 1870, contains a proviso that its provisions shall not be so construed as to allow the payment and satisfaction of debts created by bonds *issued* by the State and upon which the State is secondarily liable, nor to the payment of the sinking fund.

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Respondent is informed, believes, and so charges, that the word "issued" was, by a misprision of the enrolling clerk of the Legislature at that time, substituted for the word "endorsed," which was the word used in the original bill which passed both houses of said General Assembly, as will be seen by an inspection of their Journals, copies of which respondent will produce at the hearing.

Under the act of 1847–8, the State of Tennessee had 171
*endorsed*, upon certain conditions therein specified, the bonds of the Nashville and Chattanooga Railroad Company to the amount of $500,000, and of the East Tennessee and Georgia Railroad Company to the amount of $350,000, as also the bonds of various other enterprises and corporations, which were negotiated and put in circulation, many of which are still outstanding. These bonds are frequently referred to afterwards in various acts of the Legislature of the State as "bonds upon which the State is secondarily liable." Respon- 172
dent avers that it is to these alone said act of 1870 refers in said proviso, and that the same has no reference whatever to those bonds of the State issued under the Internal Improvement acts aforesaid. This is evident from the context of said act, the express object of which was to authorize a settlement by the railroad companies of their indebtedness to the State under said Internal

173 Improvement acts. Respondent again denies that the State was in any sense *secondarily* liable on said bonds, and avers that she was the *sole* obligor thereupon, and that the Mississippi and Tennessee Railroad Company was in no sense liable and chargeable upon the same.

Respondent avers that it was ignorant of the fact, that any of the bonds originally loaned as aforesaid to it were then outstanding; nor was it apprised of the fact, if fact it be, until the bringing of this suit. The
174 State, through payments to and investments for the sinking fund, as provided in said several Internal Improvement Acts, had retired a large number of the bonds issued under said acts, and likewise had received many millions of said bonds in settlement with the various railroad companies to whom at divers times her bonds had been loaned, and also large numbers of said bonds had been paid into said State from other sources. There were no means accessible by which it was possible to ascertain whether a part or all of the bonds so loaned to
175 it had been thus retired.

Respondent charges that complainant seeks by this suit to seize and appropriate, as a prior encumbrancer, in advance and to the exclusion of said Central Trust Company of New York and its *cestui que* trusts, a security upon the faith of which, as already stated, they have *bona fide* parted with their money.

Respondent avers that this litigation would be vain
176 and fruitless, even were complainant successful, in the absence of said consolidated mortgage bondholders or their trustee as parties defendant herein. Respondent therefore insists that said consolidated mortgage bondholders or said trustee, or both, are material and necessary parties to this suit, and it makes this defense, and asks that it be considered as though the same had been set up by plea.

Respondent further shows that the State of Tennes- 177
nessee, as has been hereinbefore set forth at large, and in various other ways, asserted and exercised the claim of sole and exclusive control and ownership over and to the lien or mortgage upon said railroads receiving her bonds under the terms and provisions of the Internal Improvement Laws aforesaid, and utterly repudiated and denied the alleged lien or mortgage now for the first time set up by the holders of said bonds. The uniform and uninterrupted course of conduct and dealing of her officials with said railroads and said bondholders, 178
with reference thereto, was in accordance with this theory. The said bondholders, without exception, and during a period of more than twenty years, in various ways assented to and acquiesced in the propriety and validity of this action of the State through her Legislature and officials, and at no time, directly or indirectly, dissented therefrom, or in any manner gave expression or utterance to any claim or right in antagonism thereto, until the bringing of this suit.

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Respondent shows that this was the case, although the State of Tennessee had emerged from the civil war much exhausted, with shattered resources and impaired credit. During the four years of its continuance she had paid no interest on her bonded debt; and with possibly one or two exceptions, the several railroad companies, including this respondent, had been wholly unable and had failed to provide a sum sufficient to pay the interest on the bonds she had loaned to 180
them, and besides, as before stated, were largely in arrears to the sinking fund; that the State has been compelled to fund in new bonds the past due interest on said debt, and afterward, for some years, made irregular and partial payments of interest, and then, for several years, failed to pay the interest altogether.

181 The legislature passed an act on the 17th of March, 1873, commonly called the funding act, which provided for the funding of the past due interest on her debt up to the 1st day of January, 1874, interest in arrears at that time amounting to more than six millions of dollars, which was accordingly funded: after paying four instalments of interest, the State again defaulted, since which time she has paid nothing. The bonds of the State under her financial policy have steadily depreciated since the year 1865, with the exception of a
182 short period after the passage of said funding act, and are now, and have been for many years, greatly below par. Under and in pursuance of the act of Legislature of 1869-70 aforesaid, not only had this respondent discharged its obligation to the State as before stated, but divers others of the solvent railroads who were liable to the State under the Internal Improvement Acts aforesaid, have also taken advantage of said acts of 1869-70, and severed all connection with the State by a full payment and satisfaction of their said indebtedness. Said
183 railroads also issued bonds of their own.

Said payments were as a rule made by third persons and with the consent of said railroad companies and at their request; and at the time of making the same the State of Tennessee, in pursuance of the provisions of said acts of 1869-70, transferred to such persons the liens or mortgage which she held under said Internal Improvement laws upon said railroads to protect her against loss by reason of the loan of her bonds as
184 aforesaid, and contemporaneously therewith the said railroad companies issued their own bonds each to the amount of its debt to the State as aforesaid, to such persons as trustees, and executed mortgages upon their property, franchises, etc., to secure the payment of the same, which were declared superior to all other mortgages upon their said property, etc., and said trustees were vested with all the rights, powers and liens enur-

ing to the State under the Internal Improvement laws 185
aforesaid, all of which was duly certified upon the face of each of said bonds as required by said acts of 1860-70. These bonds so issued as last aforesaid were commonly known as and called substitution bonds.

The aggregate amount of such substitution bonds is, as respondent is informed and believes near twenty millions of dollars, the greater part of which have, in like manner as those of respondent, been sold in New York City to *bona fide* purchasers, andare now outstanding in their 186
hands. These settlements under said legislation of 1869-70 were not all made immediately after the passage of said acts, nor were they made secretly or in undue haste, but, as a matter of fact, extended over a period of near eight years after the passage of said acts. Many of the railroads to which State aid had been granted as aforesaid were insolvent, and had failed to provide for the interest on the bonds for more than two years, or to pay to the sinking fund the annual amount required by law. The State, having seized them, and 187
placed them in the hands of receivers, and finding, as before stated, so far from realizing from that source the amounts necessary to meet accruing interest, she was losing money, by operating them, at the rate of about $2,500 per day, determined to sell them, and to that end, by appropriate legislation enacted in the years 1870 and 1871, appointed commissioners, who were authorized and empowered to foreclose the lien or mortgage of the State by selling the said roads, and where necessary, to bring suits in the Chancery Court 188
at Nashville for that purpose, making the stockholders holders of the State bonds issued to such roads, creditors, and all persons in interest parties; that in pursuance thereof suits were brought in said Court against a large number of delinquent roads, the parties above-mentioned being made defendants, and brought before the said court in due form of law, and upon the

189 hearing of said causes it was ordered and decreed by the court that said roads be sold, and thereupon, after proper and public advertisement, said roads were accordingly sold, and are now, and have been ever since, held in adverse possession by the purchasers at such sales. The said legislation plainly and unequivocally, as did all prior legislation, treated the lien and mortgages upon said delinquent roads as belonging exclusively to the State of Tennessee, and being secured for her sole benefit and indemnity.

190 Respondent further states, upon information and belief, that a short time before the passage of said legislation, a number of persons in said City of New York, purporting to be a committee representing the holders of said State bonds issued under the Internal Improvement laws aforesaid, sought the opinion of counsel as to whether a lien existed on said roads in their favor by virture of said laws, whereupon an opinion was given to the effect that such a lien did exist.

191 Respondent is informed, that shortly thereafter counter opinions were given by counsel of great eminence, both in New York and Tennessee. The legislature, being desirous of having all parties who could by possibility claim an interest in the subject matter of litigation, provided, as before stated, that the said bondholders should be made parties—which was done, as far as practicable, by personal service, and where that could not be had, by publication in due form, accord-
192 ing to the statutes of Tennessee.

Respondent further states, in this connection, that after such opinion and counter opinions were given, nothing further was ever said or done towards the assertion of the claim of the State bondholders to the benefits of the lien reserved to the State under the Internal Improvement Acts, and the intention to set up the same

was abandoned, if it ever existed, and nothing more was 193
heard of the matter until the occasion already referred
to, years afterwards.

Respondent charges, upon information and belief, that
the great bulk of said bonds were at the time of and
long before the legislation and litigation last above-
mentioned, held and owned in said City of New York
—then and now the great stock and money center of
the country—and that said holders and owners must
have known and did know of the hostile claim of said 194
State, as set forth in said legislative enactment, and
said suits and sales thereunder, and that the complain-
ant herein, and those claiming in like right with him,
must have been and were informed of the same.

Respondent, further answering, shows that during
all these years complainant and other holders of State
bonds have quietly stood by and given no sign that
they had, or believed they had, any claim whatever
against said roads. Not only has their silence and ac- 195
quiescence in the legislation aforesaid, and in the do-
ings thereunder, been uniform and uninterrupted, but
they have affirmatively conceded the absence of any
such right by twice funding the past due interest on
their bonds, and have made direct and repeated efforts
to settle, compromising with the State at less than par,
and taking new bonds in lieu thereof.

Respondent charges that it is only after these efforts
have failed, and the State has neglected to make any 196
provision for interest, that, fearing they will lose their
bonds entirely, they have bethought themselves to set
up the present unfounded, unjust and ineqitable claim.

The truth is, as respondent is informed, that com-
plainant and his associates came into possession of said
bonds by purchase at a great discount, since the tran-

197 sactions aforesaid under the acts of 1869-70, and with full knowledge thereof; that others in conjunction with him have bought said bonds as a speculation, and without any honest belief that they were entitled to the benefits of said lien; and that they bought them and are urging this and a series of other suits against the railroads receiving aid as aforesaid, in the hope that by preying upon their fears, and by depreciating the value of their property through a vexatious and harrassing litigation, they may procure some sort of a
198 compromise and settlement of their bonds.

Respondent charges, that not only have they allowed said settlement and substitution between the State, and said railroad companies to be consummated, and said substitution and other bonds, including those issued as aforesaid by respondent, to be sold to innocent and *bona fide* purchasers, without warning or objection, although at the time fully cognizant of what was being done, but they have by their conduct misled and
199 deceived all parties to these transactions, and fraudulently induced them to assume obligations and part with their money and property.

Respondent submits, in view of the premises--

1. That even if complainant and his associates originally had any lien or mortgage, which respondent denies, the same was defeasible by the express reservations of the 12th section of said act of February 11, 1852, and that the State had full power to modify or
200 destroy the same; and that, by virtue of the legislation aforesaid, she has cut off and defeated complainants and all other State bondholders from any supposed lien or mortgage upon its property.

2. That by reason of the laches, deceptive and fraudulent acts and conduct aforesaid of said bondholders, including complainant, it would be against equity and

good conscience to allow him or them now to assert 201
and maintain this suit, were the acts of 1869–70 unconstitutional and void, all of which this respondent denies.

Respondent, further answering, submits that, should the Court be of opinion that complainant has a lien upon the property of respondent, and that the same was vested in the State of Tennessee as trustee only, and that the legislation of 1869–70 was a breach and violation of said trust on her part, or 202
that such breach could be predicated of a sovereign State—all of which is denied—yet, inasmuch as she had large discretionary powers in dealing with said trust, including the right to legislate with reference thereto, or to foreclose or otherwise dispose of the same, said Central Trust Company of New York and their *cestuis que trusts* having received the same by transfer and assignment under the circumstances before mentioned, have acquired a good and perfect title thereto, which cannot be disturbed by complain- 203
ant; and if the latter has any recourse, it must be against his trustee aforesaid.

Respondent, further answering, says it is not informed as to whether any of the bonds loaned, as aforesaid, to it, are now outstanding in the hands of complainant, or any other person or persons, nor whether the coupons thereon for the years 1876, 1877, 1878, and for the 1st of January, 1879, are past due and unpaid, as alleged by complainant, although re- 204
spondent concedes the State of Tennessee has paid no interest on her bonded debt for those years, nor does respondent think this a matter in which it is in any way interested, but should the same be material, calls for the proper evidence thereof. Respondent admits that it has made no provision for the payment of said interest, as contemplated by the acts under which said

205 bonds were originally loaned; but denies it has violated its contract thereunder in any particular, or that, since its compliance with the terms of the acts of 1869–70, it is, or has been, required to pay or make provision for the same.

Respondent admits it is provided by the act of February 11, 1852, that should any of the companies receiving State aid thereunder make default in the provision of the interest upon the bonds so loaned it, as
206 required therein, the State should have the right to impound the rents, issues, profits and dividends accruing; and, to that end, might appoint a receiver to take possession and control of said road and all its assets, and that such receiver should continue in possession, operate and manage said road, until a sufficient sum shall be realized, exclusive of the cost and expenses incident to such proceedings, to pay off and discharge the interest due on said bonds. But, for the reasons already set forth, respondent denies that complainant has any
207 right to the appointment of a receiver by virtue of such provision.

Respondent submits further, in this connection, even if the Court should be of the opinion, contrary to the respondent's belief, that the lien aforesaid does exist for the benefit of complainant, and that he can assert the same, that he can only do so in the manner pointed out by the statute. Said statute provides that the appointment of a receiver shall be by the State through
208 her Governor; and no other method for the enforcement of her rights is given. Complainant sets up his right by virtue of and under the statute, and can only invoke the remedy therein given. Respondent submits, in any event, that complainant would be limited to the remedy therein prescribed, unless the same had become inoperative without fault of his.

Respondent further insists that the State of Tennessee is a necessary and indispensable party defendant herein, and that the same cannot be proceeded with without her. 209

And now, having fully answered, respondent prays it may be hence dismissed with its reasonable costs, in this behalf most wrongfully incurred.

E. C. WALTHALL,
WRIGHT, FOLKS & WRIGHT,
Solicitors for M. & T. R. R. 210

[EXHIBIT I.]

Received of the Mississippi and Tennessee Railroad Company, two hundred and ninety-nine thousand, eight hundred and fourteen dollars ($299,814) in full payment of said company's indebtedness to the State of Tennessee on account of State aid afforded it under an act to establish a system of Internal improvements in this State, passed 11th February, 1852, and the acts amendatory thereof, which said payment was made in the bonds of the State as authorized by the laws thereof, and the same is a full and perfect discharge of said indebtedness and of the lien held by the State on the property of said company on account thereof, or on account of any bonds issued by said State to or for the benefit of said company. 211 212

(Signed) JAMES L. GAINES,
Comptroller.

(STATE SEAL)

New York, January 16, 1878.

## Decree.

UNITED STATES OF AMERICA,

DIVISION OF THE WESTERN DISTRICT OF TENNESSEE.

In the Circuit Court of the United States, within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said Court, at a Regular Term thereof, begun and held for its May Term, A. D. 1881, at the United States Court House, in the City of Memphis, in said district, on to-wit: the 7th day of October, A. D. 1881, in the following cause, to-wit:

CALVIN AMORY STEVENS, *et al.*,
Plaintiffs,
*v.*
THE MISSISSIPPI & TENNESSEE RAILROAD COMPANY, *et al.*,
Defendants.
No. 318.

This cause came on to be heard upon the bill of complainants, the answer of the defendants, upon the proof adduced by complainants and defendants, and upon the arguments of counsel, and it appearing to the satisfaction of the Court that the bill of complainants is without equity, and that both the

5 law and equity of the case is with the defendants, and it further appearing that the lien and mortgage reserved by the Act of the Legislature of Tennessee, of February 11th, 1852, and acts amendatory thereof in favor of said State, on the road and other property of the defendant, The Mississppi & Tennessee Railroad Company, was solely to indemnify and secure the State against loss on account of the loan of her bonds to said defendant Company, as therein provided, and not to secure the payment
6 of said bonds to the holders thereof, as contended by complainants; and it further appearing that said lien and mortgage so created by said act, and other acts amendatory thereof, was by said defendant Company released, discharged and satisfied by the payment by said defendant Company to said State of the original loan made to it under said acts; and it further appearing that the mortgage made and executed by said defendant Company to the Central Trust Company of New York, as trustee upon its
7 property and franchises of date July 30th, 1877, was in all respects legal and valid, and what it purports to be—a first and paramount mortgage upon said property and franchises for the security of Henry T. Lemmon and others, the holders of the series of bonds so issued by said defendant Company.

It is accordingly ordered, adjudged and decreed by the Court that the bill of complaint be, and the same is, dismissed; and it is further ordered, adjudged and decreed that the title of the said Cen-
8 tral Trust Company of New York, trustee as aforesaid, be quieted, and complainants or others, the holders of the bonds so loaned by the said State to the said defendant Company, under and by virtue of the acts aforesaid, be perpetually enjoined from asserting any claim of title to the property of the said defendant Company on account of said loan, and that complainants pay all costs accruing in this

cause, to be taxed, for which let execution issue. 9
Thereupon at the same time the complainants pray an appeal to the next term of the Supreme Court of the United States, which is allowed, and the amount of the appeal bond to be given by them is fixed by the Court at one thousand dollars, and the defendants waive the issuance and service of citation.

## Order setting cause for trial.

It is ordered by the Court that the foregoing 10
cause be set for trial on the first Monday of September next, when the same will be heard, unless good cause for continuance be shown.

August 9th, 1880.

## Order overruling motion to dismiss.

In the above-named cause the motion made by complainants to dismiss their bill in common 11
form was by the Court overruled. Wherefore it is ordered that the said motions of the complainants to dismiss their bill upon the payment of costs be, and the same is, by the court overruled.

Sept. 25th, 1880.

12

# U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

[*In Equity.*]

---

CALVIN AMORY STEVENS, and JOHN T. TERRY, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MISSISSIPPI AND TENNESSEE RAILROAD COMPANY.

*vs.*

THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY.

Know all men by these presents, that we, Calvin Amory Stevens, Eugene Kelly and John T. Terry, residents of the City and State of New York, and Peter Geddes, resident of the City of Brooklyn in said State, and Solon Humphreys and Eugene Plunkett, residents of the City and State of New York, are jointly and severally held and firmly bound unto the Mississippi and Tennessee Railroad Company, in the sum of one thousand dollars each, to be

paid to the said, the Mississippi and Tennessee Railroad Company, and their successors for which payment well and truly to be made, each of us doth hereby bind himself, his heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals, and dated this thirteenth day of October, in the year of our Lord, one thousand eight-hundred and eighty-one.

Whereas, lately, at a Regular Term of the Circuit Court of the United States in and for the Western District of Tennessee, held at the City of Memphis in said State, a final decree was rendered in the above entitled cause, dismissing the complainants' bill out of said court.

And whereas an appeal from said decree to the Supreme Court of the United States was prayed on behalf of complainants in said suit, namely, Calvin Amory Stevens and John T. Terry, which appeal was granted, and the order granting the same was filed with the clerk of said Circuit Court.

Now, the condition of the above obligation is such that if the said Calvin Amory Stevens and John T. Terry shall prosecute the said plea to effect and answer all damages and costs if they fail to make the said appeal good, then the above obligation to be void, else to remainin full force and virtue.

CALVIN AMORY STEVENS, [SEAL.]
EUGENE KELLY, [SEAL.]
JOHN T. TERRY, [SEAL.]
P. GEDDES, [SEAL.]
SOLON HUMPHREYS, [SEAL.]
EUGENE PLUNKETT, [SEAL.]

UNITED STATES OF AMERICA, } ss:
*Southern District of New York.* }

On this 13th day of October, 1881, before me personally appeared Calvin Amory Stevens, Eugene Kelly, Peter Geddes, John T. Terry, Solon Humphreys and Eugene Plunkett to me known and known to me to be the same persons described in and who executed the foregoing bond and severally acknowledged to me that they executed the same.

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

UNITED STATES OF AMERICA, } ss:
*Southern District of New York.* }

CALVIN AMORY STEVENS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

CALVIN AMORY STEVENS.

Sworn to before me this 13th day of October, 1881.

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

UNITED STATES OF AMERICA, } ss:
*Southern District of New York.* }

PETER GEDDES, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

P. GEDDES.

Sworn to before me this 13th day of October, 1881.

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

13 UNITED STATES OF AMERICA, } ss:
*Southern District of New York.* }

EUGENE KELLY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE KELLY.

14 Sworn to before me this 13th }
day of October, 1881. }

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

UNITED STATES OF AMERICA, } ss:
*Southern District of New York.* }

15 JOHN T. TERRY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

JNO. T. TERRY,

Sworn to before me this 13th }
day of October, 1881. }

16 EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

UNITED STATES OF AMERICA, } ss:
*Southern District of New York.* }

SOLON HUMPHREYS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand

dollars over and above all my debts and liabilities and property exempt by law from execution.

SOLON HUMPHREYS.

Sworn to before me this 13th day of October, 1881.

EDWIN F. COREY,
*Notary Public,*
N. Y. Co.

[L. S.]

UNITED STATES OF AMERICA, *Southern District of New York.*

EUGENE PLUNKETT, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE PLUNKETT,

Sworn to before me this 13th day of October, 1881.

EDWIN F. COREY,
*Notary Public,*
N. Y. Co.

[L. S.]

UNITED STATES OF AMERICA, *Southern District of New York.*

S. NEWTON SMITH, being duly sworn, deposes and says: I am well acquainted with Solon Humphreys, one of the sureties named in the foregoing bond, and know of my own knowledge that he is worth the sum of two thousand dollars over and above all his debts and liabilities and property exempt by law from execution.

S. NEWTON SMITH.

Sworn to before me this 13th day of October, 1881.

EDWIN F. COREY,
*Notary Public,*
N. Y. Co.

[L. S.]

21 UNITED STATES OF AMERICA, }
*Southern District of New York.* }

WILLIAM H. FARRELL, being duly sworn, deposes and says: I am well acquainted with Eugene Plunkett, one of the sureties named in the foregoing bond, and know of my own knowledge that he is worth the sum of two thousand dollars over and above all his debts and liabilities and property exempt by law from execution.

WM. H. FARRELL,

22 Sworn to before me this 13th }
day of October, 1881. }

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

By the Honorable E. S. HAMMOND, United States Judge, in and for the Sixth Judicial Circuit, Western Dis-
23 trict of Tennessee.

I hereby approve the foregoing bonds as to form and manner of execution and as to the amount thereof and the sufficiency of the sureties.

Dated, October 18th, 1881.

E. S. HAMMOND,
*United States Judge.*

24

## Deposition of Wm. Butler Duncan.

UNITED STATES CIRCUIT COURT,

1

WESTERN DIRTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the MOBILE & OHIO RAILROAD COMPANY,

*vs.*

2

THE MOBILE & OHIO RAILROAD COMPANY.

Before WILLIAM H. DELANCEY,
*Notary Public,*
52 Broadway, N. Y.

APRIL 17th, 1880.

3

Present—Mr. L. E. WRIGHT,
*for Respondents.*
Mr. E. L. ANDREWS,
*for Complainants.*

WILLIAM BUTLER DUNCAN, a witness produced on the part of the respondents in the above-entitled suit, being by me first duly cautioned and sworn 4 therein, to testify the truth, the whole truth, and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

*Direct examination* by Mr. L. E. WRIGHT :

1 Q. What is your name, age, residence and occupation ?

A. Wm. Butler Duncan ; fifty years old ; I reside at 24 University Place, New York City ; am at present Receiver and President of the Mobile & Ohio Railroad Company.

2 Q. How long have you been connnected with the Mobile & Ohio Railroad as President and Receiver ; state also your first connection with said road and what positions you have filled in the same ?

A. I originally became a stockholder of the Mobile & Ohio Railroad Company sometime during the years 1867 or 1868, I think ; I was elected a director of the company I think, in 1872 or 1873 ; I was elected President in 1874, and I was appointed Receiver in May, 1875, since which time I have held both of those positions.

3 Q. State what connection you had, if any, with what are known as the substitution bonds of the Mobile & Ohio Railroad Company, and whether you were one of the trustees of what is known as the Tennessee substitution mortgage of the Mobile & Ohio Railroad Company ; give a full and complete history of your connection with the issue of the same and the payment of the debt due the State of Tennessee by the said company ?

A. In the year 1871, the M. & O. R. R. Co. by its president, Mr. Murdock, came to New York for the purpose of availing of the legislation of the State of Tennessee, enabling the said railroad to pay off its indebtedness to the State. Application was made to myself in conjunction with Messrs. Adrian Iselin and R. T. Wilson to provide the necessary amount of bonds of the State of Tennessee to enable the payment of the said debt. An arrangement was made by which we agreed to provide such

bonds and to carry the same until the requisite amount was acquired, under which arrangement we were to charge interest on the advances necessary for the acquisition of the bonds, and a commission. Personally, I agreed that my then firm of Duncan, Sherman & Co., would advance one-third of the amount of the purchase money rendered necessary in the acquisition of said bonds. A portion of such advances were made by the firm through Messrs. Wilson and Iselin. Subsequently when the entire amount of bonds requisite had been acquired the bonds were delivered by Messrs. Wilson, Iselin and myself to the agent of the State of Tennessee in exchange for the bonds of the M. & O. R. R. Co., bearing upon their face, certificate of the Controller of the State of Tennessee that the lien held by the State was assigned to trustees, viz: Messrs. Wilson, Iselin and Duncan, for the benefit of the bonds of the Railroad so delivered to us in exchange for the Tennessee State bonds handed to the agent of the State. Subsequently, these bonds of the railroad, countersigned by the Controller of the State, were disposed of by us, the disposition having been made through the intermediary of Messrs. A. Iselin & Co., and the net profit, after providing for the cost of the State bonds delivered to the Controller with interest and expenses thereto attaching, was paid over to the M. & O. R. R. Co. Personally, neither myself nor my firm had any interest whatever in the matter, except in the charge for interest and commission heretofore mentioned.

4 Q. Examine Exhibit No. 3 to the answer of the M. & O. R. R. Co. which purports to be a receipt of the agent of the State of Tennessee for the bonds and coupons of the State of Tennessee, amounting, in the aggregate, to $1,785,245, and state whether the same is a true copy given by the agent of the State of Tennessee?

5 *Direct examination* by Mr. L. E. WRIGHT :

1 Q. What is your name, age, residence and occupation ?

A. Wm. Butler Duncan ; fifty years old ; I reside at 24 University Place, New York City ; am at present Receiver and President of the Mobile & Ohio Railroad Company.

2 Q. How long have you been connnected with the Mobile & Ohio Railroad as President and Receiver ; state also your first connection with said
6 road and what positions you have filled in the same ?

A. I originally became a stockholder of the Mobile & Ohio Railroad Company sometime during the years 1867 or 1868, I think ; I was elected a director of the company I think, in 1872 or 1873 ; I was elected President in 1874, and I was appointed Receiver in May, 1875, since which time I have held both of those positions.

3 Q. State what connection you had, if any, with
7 what are known as the substitution bonds of the Mobile & Ohio Railroad Company, and whether you were one of the trustees of what is known as the Tennessee substitution mortgage of the Mobile & Ohio Railroad Company ; give a full and complete history of your connection with the issue of the same and the payment of the debt due the State of Tennessee by the said company ?

A. In the year 1871, the M. & O. R. R. Co. by its president, Mr. Murdock, came to New York for
8 the purpose of availing of the legislation of the State of Tennessee, enabling the said railroad to pay off its indebtedness to the State. Application was made to myself in conjunction with Messrs. Adrian Iselin and R. T. Wilson to provide the necessary amount of bonds of the State of Tennessee to enable the payment of the said debt. An arrangement was made by which we agreed to provide such

bonds and to carry the same until the requisite amount was acquired, under which arrangement we were to charge interest on the advances necessary for the acquisition of the bonds, and a commission. Personally, I agreed that my then firm of Duncan, Sherman & Co., would advance one-third of the amount of the purchase money rendered necessary in the acquisition of said bonds. A portion of such advances were made by the firm through Messrs. Wilson and Iselin. Subsequently when the entire amount of bonds requisite had been acquired the bonds were delivered by Messrs. Wilson, Iselin and myself to the agent of the State of Tennessee in exchange for the bonds of the M. & O. R. R. Co., bearing upon their face, certificate of the Controller of the State of Tennessee that the lien held by the State was assigned to trustees, viz: Messrs. Wilson, Iselin and Duncan, for the benefit of the bonds of the Railroad so delivered to us in exchange for the Tennessee State bonds handed to the agent of the State. Subsequently, these bonds of the railroad, countersigned by the Controller of the State, were disposed of by us, the disposition having been made through the intermediary of Messrs. A. Iselin & Co., and the net profit, after providing for the cost of the State bonds delivered to the Controller with interest and expenses thereto attaching, was paid over to the M. & O. R. R. Co. Personally, neither myself nor my firm had any interest whatever in the matter, except in the charge for interest and commission heretofore mentioned.

4 Q. Examine Exhibit No. 3 to the answer of the M. & O. R. R. Co. which purports to be a receipt of the agent of the State of Tennessee for the bonds and coupons of the State of Tennessee, amounting, in the aggregate, to $1,785,245, and state whether the same is a true copy given by the agent of the State of Tennessee?

13 A. I believe it to be a true copy.

5 Q. State, if you can, where the said Tennessee substitution bonds of the M. & O. R. R. Co. were negotiated and sold, and to whom?

A. They were almost entirely, if not all, sold in Europe, mainly in Switzerland, through the instrumentality of the correspondents of Messrs. A. Iselin & Co., Lombard, Odier & Co., who, to the best of my knowledge, represented a large number of persons who were interested in the same.

14 6 Q. Have you any means, if so, what, of knowwhether the purchasers of said Tennessee substitution bonds were foreigners?

A. The fact that in the late reorganization scheme of the M. & O. R. R. Co. the entire amount of these bonds were found in the hands of people residing in Europe, and mainly in Switzerland, is the only means I have of knowing who were the purchasers of these bonds.

7 Q. During the time you and your associates, 15 Messrs. Iselin & Wilson, were engaged in procuring the State bonds necessary to a settlement with the State of Tennessee on behalf of the M. & O. R. R. Co., and in the negotiations and sale of the substitution bonds of said company, did you at any time hear of any claim being asserted by the holders of Tennessee State bonds which had been originally loaned to the M. & O. R. R. Co. under the Internal Improvement laws of said State, asserting any claim of lien upon the property of said com- 16 pany situated in the State of Tennessee?

A. I have no recollection of having heard at any time during the negotiation, or for some time thereafter, of any such claim being set up by anyone.

8 Q. Where were the said Tennessee bonds used in settlements with the State obtained; were they purchased on the market at New York.

A. The purchase of the bonds was entirely man-

aged by either Mr. Wilson or Mr. Iselin, I think 17
the former; and to the best of my knowledge were all purchased here in the market, probably at the Stock Exchange; I did not myself buy any bonds at all; I don't know that I ever purchased or sold any Tennessee State bonds, excepting in one instance when during the war I purchased a large amount, I believe $500,000 of the bonds of the State of Tennessee under instructions from George Peabody, of London, who devoted the profits he subsequently made upon that purchase to educational purposes, 18
I think largely in the interest of the State of Tennessee.

9 Q. When did you for the first time hear of the claim that the bonds originally loaned to the M. & O. R. R. Co., by the State of Tennessee under her Internal Improvement laws, constituted a lien upon the road of said company in Tennessee in favor of the bondholders?

A. I have no recollection of hearing of such a claim being set up until the proceedings in the foreclosure 19
of the substitution mortgage in the Circuit Court of the U. S. for the Western District of Tennessee progressed for some time; I don't now recollect having heard it until just preceding the final argument in those proceedings at Memphis in the year 1877; and the suggestion was an entire surprise to me and seemed a ridiculous proposition.

10 Q. When did you first hear of the opinion of Messrs. Davies & Davis, to the effect that the bonds of the State of Tennessee originally loaned to 20
the railroads under the Internal Improvement laws of the State constituted a lien upon the roads of said companies in the State.

A. I have no recollection of having heard of that until the argument before mentioned in the fall of 1877.

11 Q. Are you familiar with the history and de-

tails of the scheme of reorganization of the liens and claims against said M. & O. R. R. Co., and what connection, if any, did you have therewith?

A. I am thoroughly conversant, having been the author, and having, in the main, carried out all the details of the scheme to a successful conclusion through the instrumentality of the Committee of Reorganization.

Q. Give, in a general way, the scheme of reorganization, and file the agreement of reorganization and the documents resulting therefrom in carrying out the details of the same?

A. The main feature of the scheme of reorganization was the recognition of all the liabilities of every kind and nature of the M. & O. R. R. Co., with interest thereon up to a certain date, viz., June 1, 1877, and the issue of a new series of securities to represent such claims and interest, in the form of bonds and debentures. The total amount of claims against the M. & O. R. R. Co. upon the foregoing basis aggregated the sum of upwards of $15,000,000, represented originally by upwards of (1) $9,000,000 under the mortgage known as the mortgage of 1853, being a first lien over the entire portion of the M. & O. R. R. lying within the States of Alabama, Mississippi and Kentucky, and upwards of $2,000,000 under the substituted mortgage of 1871, being a first lien upon the M. & O. R. R. lying within the State of Tennessee; (2) a lien over the entire length of the road of nearly $2,000,000; (3) a lien of about $600,000, and (4) indebtedness of about $1,000,000 unsecured. The scheme contemplated new issues in lieu of all these claims, or under certain conditions and circumstances, in exchange of these various claims, the same to be held by a trustee for the benefit of the new issues, the following new securities, viz.: A first mortgage over the entire length of the road for $7,000,000; first preferred

income and sinking fund debentures in like manner 25
of $5,300,000; second debentures to the amount of $1,850,000; third debentures, $600,000; and fourth debentures, $900,000. The total amount of the entire liens, with interest to June 1, 1877, under the two mortgages of 1853 and 1871, aggregated about $12,500,000. In exchange for this lien, as aforesaid, there was created the new first mortgage of $7,000,000, and first preferred income debentures of $5,300,000.

Recognizing the priority of the lien in the State 26
of Tennessee of the Tennessee substitution bonds, and appreciating the importance of securing the adhesion of the representatives of the lien over a section of the road, it was determined, with the assent of the holders of a large number of mortgage bonds, under the mortgage of 1853, to tender to the holders of the Tennessee substitution bonds the following amounts of new securities in exchange, as heretofore stated, for their then holdings, viz.: For the face of each Tennessee substitution bond, 27
$626 of new 1st mortgage 6%, and $374 of new first preferred income and sinking fund debentures, while the scheme contemplated that the holders of the sterling bonds under the mortgage of 1853 were only to receive $440 in new first mortgage 6% bonds and $560 in first preferred income and sinking fund debentures.

The new first mortgage bears a fixed rate of interest—6% per annum, payable semi-annually, while the preferred income and sinking fund debentures 28
bear interest only if earned, and is not accumulative, and are therefore dependent upon the results of the business annually.

In like manner the 2d, 3d and 4th classes of claims received in exchange therefor 2d, 3d and 4th preferred income and sinking fund debentures, respectively, interest upon which was to be paid an-

29 nually, but only if earned, and after payment of the interest on the 1st preferred income and sinking fund debentures. I herewith hand you copy of the agreement for the reorganization of the securities, &c., of the M. & O. R. R. Co., dated October 1, 1876, and marked Exhibit I, W. H. D. L., N. P., to this deposition; copy of mortgage and deed of trust, and various documents under which the new securities provided by the scheme have been issued, also herewith marked Exhibit II, W. H.
30 D. L., N. P.

13 Q. Please state how far this scheme of reorganization has progressed and to what extent the holders of the various securites of the M. & O. R. R. Co. have become parties to the same?

A. The entire amount of claims of every kind and nature against the M. & O. R. R. Co., with the exception of perhaps less than one half of one per cent. have united in said scheme, and have deposited their securities and claims with the Farmers' Loan
31 and Trust Company of New York, and have received in exchange therefor the new securities provided for by the scheme.

14 Q. When did the holders of said Tennessee substitution bonds and said sterling mortgage bonds become parties to this scheme of reorganization and transfer their securities under it?

A. A large proportion of these securities was transferred almost immediately after the inauguration of the scheme, and within the last three months
32 of 1876, and the first three months of 1877.

15 Q. At the time these claims were so transferred to the Committee of Reorganization, as I understand you, you had not heard of the claim now sought to be established by the holders of the Tennessee State bonds against the M. & O. R. R. Co.?

A. To the best of my recollection it never entered my head that such a claim was suggested until the

time I state, of the argument of the case in Ten- 33
nessee.

16 Q. Had the holders of said Tennessee substitution bonds and sterling mortgage bonds and other securities of said company to the best of your knowledge any information of the said claim on the part of the holders of Tennessee State bonds originally issued to the M. & O. R. R. Co.?

A. On the contrary, we had great difficulty persuading the holders of the Tennessee substitution bonds of the M. & O. R. R. Co. to relinquish a por- 34
tion of the full amount of their bonds or to accept the terms of the scheme of reorganization, claiming as they did to own primarily the lien for the full amount upon the Tennessee portion of the road, which in their judgment was a perfect security. The scheme of reorganization was inaugurated by the holders of the sterling bonds, and none of the committee, Messrs. Hays, Pierson & Dupuy, directly or indirectly were to the best of my knowledge in any way interested in any of the Tennessee bonds; and 35
the fact that the committee and the holders of the first mortgage sterling bonds consented to the placing of the Tennessee substitution bonds upon a superior plane to their own, is evidence to my mind of there being no question in their mind as to the superiority of the lien on said Tennessee bonds over that portion of the road lying within the State of Tennessee.

17 Q. State as far as you know where the holders and owners of the sterling mortgage bonds resided? 36

A. The holders representing about one-third of the total lien under the sterling mortgage resided in Europe, the balance in this country.

18 Q. Please state at what time or times Ernest Saladin and Augusta Iselin and Alex R. Duncan transferred their substitution and sterling mortgage bonds to the committee of reorganization?

A. E. Saladin, on February 16th, 1877; Augusta Iselin, on February 16th, 1877; A. R. Duncan, on November 27, 1876.

19 Q. Do you know the residence of Alex. Robert Duncan, one of the defendants in this case?

A. Yes; he is a resident of Arbroath, County of Forfar, Scotland.

20 Q. Do you know that said Alex. R. Duncan was the owner and holder of said sterling or first mortgage bonds prior to October 1st, 1876, and if so, how many of said bonds did he own, and did he transfer the same to the committee and receive new first mortgage bonds, and debentures in exchange therefor, at the date referred to by you?

A. He was an owner of ten mortgage bonds of 1853, and deposited them with the committee in November, 1876, and he has received new mortgage bonds and debentures to which said sterling bonds were entitled, and for which said sterling bonds are now held for security.

W. BUTLER DUNCAN.

Subscribed and sworn to before me, this 19th day of April, 1880.

WILLIAM H. DELANCEY,
*Notary Public.*
Westchester County, acting in New York County, under and by virtue of Chapter 807 of the Laws of 1873, of the State of New York.

[L.S.]

## Certificate.

41

UNITED STATES OF AMERICA,
*Southern District of New York*, } ss.:
State and County of New York.

I, WILLIAM H. DELANCEY, a Notary Public, in and for the State and County aforesaid, and duly commissioned and qualified under the laws of the United States to take depositions for use in the Circuit Courts of the United States, do hereby certify that the reason for taking the foregoing depo- 42
sition is, and the fact is that the testimony of the said witness is material and necessary for the respondents in the cause in the caption of said deposition named, and that the said witness lives, and did live at the time of taking said deposition in the City and County of New York, the same being at a greater distance than one hundred miles from the City of Memphis, where the Court, at which it is expected the said cause will be tried, was appointed to be held, to-wit: more than five hundred miles 43
therefrom.

I further certify that the said witness was examined and cross-examined by the counsel for the respective parties to the cause named in the caption hereto.

I further certify that on the 19th day of April, A. D. 1880, I was attended at my office, No. 52 Broadway, in the City, County and State of New York, in the Southern District of New York aforesaid by L. E. Wright, Esq., solicitor, and of counsel for 44
the respondents, E. L. Andrews, Esq., solicitor and of counsel for complainant, and by William Butler Duncan, the witness, who was of sound mind and of lawful age, and the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the pres-

ence of the witness and from his statements, and after carefully reading the same to witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of annexing the several Exhibits, and of sealing up and directing the same with this certificate of the reasons aforesaid for taking the said deposition, with my own hand, to the Court for which the same was taken.

And I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In witness whereof, I have hereunto set my hand and seal this 19th day of April, in the year of our Lord, one thousand eight hundred and eighty, and of the Independence of the United States the one hundred and fourth.

WILLIAM H. DELANCEY,
[L. S.] *Notary Public*,
Westchester County.

Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

EXHIBIT NO. 1.—W. H. D. L., N. P. 49

*To Deposition of W. Butler Duncan.*

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AGREEMENT

FOR THE RE-ADJUSTMENT, &c.,

of the

SECURITIES 50

of the

MOBILE AND OHIO RAILROAD CO.

*Dated October* 1, 1876.

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WM. H. HAYS, *Chairman*,
WM. S. PIERSON,
T. HASKINS DE PUY, 51
*Committee of Reorganization.*

OFFICE, No. 11 PINE ST., N. Y.

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Memorandum of Agreement and transfer, made the first day of October, 1876, by and between the Mobile & Onio Railroad Company, a Corporation by that name exisisting under the laws of Alabama, and operating also under the laws of the States of 52 Mississippi, Tennessee and Kentucky respectively, party of the first part, and the various other parties whose names are subscribed hereto, being creditors of said company, some holding security as hereinafter specified, and others unsecured, each subscriber for himself, and neither for the other, parties of the second part, William H. Hays, of the City of New

York, and William S. Pierson, of Windsor, in the State of Connecticut, and T. Haskins Du Puy, of Philadelphia, in the State of Pennsylvania, parties of the third part :—

*Whereas*, The said Railroad Company, originally incorporated by the State of Alabama, and operating under the laws of that State, has, by the legislation of the several States of Mississippi, Tennessee, and Kentucky respectively, obtained valuable corporate rights and privileges, as well as important exemptions, in those respective States ;—

*And whereas*, Owing to a succession of misfortunes the said corporation has fallen into arrears in the payment of its bonded and other indebtedness, to such an extent that proceedings for the foreclosure of mortgages executed by it are now pending, which proceedings have gone to an advanced stage and are still being pushed, and, in addition, the day of payment named in some of its mortgages is near at hand ;—

*And whereas*, Differences and disputes have arisen between the different classes of holders of the securities and evidences of debt issued by said Company, which differences and disputes, if persisted in, are likely to lead to protracted litigation, and to the sacrifice or deterioration of the property of the said Company, and to great delay in the resumption of regular and legitimate operations on the road; and it is therefore deemed expedient that a scheme should be devised, to be assented to by the various classes of claimants upon the said company, for the harmonizing and compromising their respective claims, without ending the corporate existence or corporate powers of said company, and without putting an end to or limit upon its corporate privileges :—

*And whereas*, The secured indebtedness of the said Company now exists in the form of bonds and coupons secured by mortgage liens, as specified in the schedule hereto annexed, and as appears by the books of the Company, exclusive of interest on said coupons:— 57

*And whereas*, In addition to said mortgage indebtedness, judgments have been recovered against said Company, which are claimed to constitute liens upon some of its property, subject to its mortgage indebtedness, but a large part of which judgment indebtedness, is presumed by lapse of time and otherwise to have been in fact satisfied; and, in addition thereto, the said Company owes a considerable amount of floating or unsecured indebtedness: and the undersigned, holders of claims of the various classes against said Company, as well those specified in the said schedule hereto annexed, as judgment creditors and unsecured creditors, have agreed to compromise and compound with said Company upon the said Company's issuing new securities for all the said indebtedness in the manner hereinafter agreed upon, to the end that, if practicable, said foreclosure suits may be discontinued, and the property affected thereby restored to the custody and control of the said Company under the conditions of this agreement, and the stipulations accompanying the same:— 58 59

*But whereas*, It is understood by said creditors that if such scheme shall be found to be impracticable because not assented to by a sufficient number of creditors, or for other reasons, that then the said foreclosure proceedings shall be prosecuted to either a sale or a strict foreclosure, and a purchase or acquisition of the property of the said Company consummated for the benefit of the subscribers hereto, who are such creditors as aforesaid, and that a new 60

corporation or corporations shall be created, and new securities issued for the benefit of such creditors.

Now, this memorandum witnesseth, that the said parties hereto have covenanted, agreed and transferred, and do hereby covenant, agree and transfer to and with each other in manner and form following, that is to say:

*First.*—The said William H. Hays, William S. Pierson, and T. Haskins Du Puy, are hereby constituted assignees in trust, agents, managers and attorneys of the said parties hereto, who are creditors of the Mobile and Ohio Railroad Company, or holders of any of the securities specified in said schedule hereto annexed, for the purpose of receiving the several demands of said creditors who become parties hereto, and of realizing, converting, managing and controlling the same, for the purpose, in the manner, and with the powers hereinafter specified.

*Second.*—Each of the parties hereto, being a creditor of the said Mobile and Ohio Railroad Company at the time of the expiration of this instrument, assigns, transfers, delivers, and makes over to the said William H. Hays, William H. Pierson, and T. Haskins Du Puy, all the evidences of debt issued by said company, and claims against said company, now held by such subscriber hereto, whether in the shape of bond, coupon, note, judgment, open account, unliquidated demand, unpaid voucher or otherwise, to be held by the said Hays, Pierson and Du Puy, as such assignees, agents, managers and attorneys, in the manner and for the purposes and upon the trusts so hereinafter declared concerning the same. Upon this instrument being subscribed by all the creditors of said corporation, holders of

evidence of debt issued by said corporation, or of other claims against the same, the said assignees, agents and attorneys shall have and hold the claims and evidences of debt of such creditors, with full power and authority to cancel, surrender, release and discharge all such evidences of debt, claims and demands so transferred to them, upon receiving from said Mobile and Ohio Railroad Company new evidences of debt and securities to the extent and in the manner hereinafter provided. 65

*Third.*—Upon the request of the said Hays, Pierson and Du Puy, or their successors, the said corporation hereby agrees to execute and deliver, or cause to be executed and delivered, to the said William H. Hays, William S. Pierson and T. Haskins Du Puy, or their successors or appointees, new bonds and obligations or acknowledgments of indebtedness secured respectively by a new mortgage and trust deed to be made by said corporation as hereinafter provided, and containing such stipulations and clauses for the security of the creditors of said company as the said assignees and attorneys shall advise and require, not in conflict with the provisions of this agreement. 66 67

*Fourth.*—The said new mortgage shall be called the first mortgage, and shall constitute a first and primary lien on all of the main line of the said Mobile and Ohio Railroad, lying at and between the City of Mobile and the City of Columbus, in the State of Kentucky (exclusive, however, of the several branches now possessed or to be acquired or constructed, those now possessed being known as the Aberdeen branch, Columbus branch, Starkville branch and the Gainesville branch), covering all and singular the chartered rights, railways, sidings, turnouts and all connected therewith, bridges, fences, warehouses, depot and office buildings, machine 68

shops, tools, iron, timber and all materials necessary in the repair of the road, rolling stock or machinery, and all wood and coal and other materials necessary in running said road, and all fixtures, privileges, rights, real estate, and all other property owned, and which may be hereafter owned by said company, and which shall be necessary to the business of said company, or for the purpose of carrying freight and passengers upon said main line; but not including any lands granted to said company by any State, or by the United States, nor lands which may be situated apart from the line of the road, and not actually required for the use or running of the road, the said trust deed shall be in the form, and shall have the effect and operation of a conveyance in trust to trustees, of the lands granted to said company by any State or the United States, as well as all lands belonging to the company and not necessary for the operation of the railroad of said company, and also so much of the net income of said company as shall remain after payment of current expenses, cost of maintenance, improvement and repairs, and interest on said new first mortgage, and on the debentures, as hereafter more particularly specified.

*Fifth.*—The first mortgage mentioned in the last preceding paragraph shall be made for the security of the holders of the present outstanding issue of first mortgage bonds of said corporation, and of the coupons issued with said first mortgage bonds, whether such coupons are now detached from such bonds, or are now attached thereto, and for the benefit and security of the holders of the issues known as the sterling arrearage interest bonds, the funded arrearage interest bonds, and the coupons detached from or attached to such bonds, matured and unpaid, and also for the benefit and security of

the holders of the issue known as the Tennessee Sub- 73
stitution Bonds, and coupons detached therefrom or attached thereto, matured and unpaid, all upon an equal footing as to grade of new security (provided such holders become parties to this agreement. and transfer the securities held by them respectively pursuant hereto), and for the purpose of providing funds for necessary expenses and outlay under this agreement. The total amount of principal money secured by bonds issued under the new first mort-
gage is to be seven millions of dollars, payable in 74
the City of New York, in gold coin of the United States, on the first day of December, in the year 1927, bearing interest payable in lawful money of the United States, in the following manner: two per cent. on the first day of December, 1877; two per cent. on the first day of June, 1878; three per cent. on each first day of December and June thereafter; and the bonds to be issued under said first mortgage may be in sums of either $1,000, $500, $300 or $100 each, and shall have negotiable inter- 75
est warrants or coupons attached thereto payable in New York. But the holders of the present first mortgage securities are to be interested in the new securities issued under the new first mortgage, as next hereafter stated; that is to say:

*Sixth.*—Each subscriber hereto, who shall have transferred to the said assignees, agents and attorneys a first mortgage bond of said company, shall be entitled to receive an amount equal to four hun-
dred and forty dollars for each one thousand dol- 76
lars, or each £225, of the principal sum payable upon such bonds so transferred, in a bond or bonds, to be issued under the said new first mortgage hereinbefore provided for, to be taken at par; and every subscriber hereto, who shall have so transferred first mortgage coupons of said company heretofore issued (provided the due date originally mentioned there-

in shall not have been later than the first day of November, 1877), shall receive an amount equal to the value of such coupons, as below estimated, in a bond or bonds, to be issued under said new first mortgage hereinabove provided for, each such coupon to be estimated for this purpose as being worth, and as securing the payment of, thirty-six dollars, except coupons maturing November 1, 1877, which shall each be estimated as worth only six dollars; and each holder of sterling interest bonds who shall have become a subscriber to this agreement, and shall have transferred his bonds in pursuance hereof, shall be entitled in lieu of each bond so transferred, to a bond or bonds, for the principal sum of four hundred and forty dollars each, to be issued under said new first mortgage for each £200 of the principal amount of the bonds so transferred by him under this agreement; and each holder of coupons heretofore issued with any such sterling interest bond (provided the original due date named in such coupon shall not be later than the first day of November, 1877), shall be entitled in lieu thereof to a bond or bonds to be issued under such new first mortgage for the amount of the coupons so transferred, valuing each such coupon at the sum of thirty-six dollars, except coupons maturing November 1, 1877, which shall be valued at only six dollars; and each holder of bonds generally known as arrearage interest bonds, who shall have become a subscriber to this instrument, and shall have transferred his bonds pursuant to the terms hereof, shall be entitled to a bond or bonds to be issued under said new first mortgage for the principal sum of three hundred and ten dollars for each $1,000 of the principal amount of the bonds so transferred, and each holder of coupons heretofore issued with such arrearage interest bonds (provided the original due date of such coupons shall not have been later than

the first day of November, 1877), shall be entitled to 81
new first mortgage bonds for the amount of the
coupons so transferred, valuing each such coupon
at thirty-six dollars, except that coupons of which
the original due date was the first day of November,
1877, shall be valued at six dollars each; each hold-
er of bonds known as Tennessee Substitution Bonds,
who shall have become a subscriber to this agree-
ment, and who shall have transferred his bonds as
aforesaid to said assignees and attorneys, shall re-
ceive in lieu of the bonds so transferred a bond or 82
bonds to be issued under said new first mortgage
for the par amount of $626 for each bond so trans-
ferred, and each holder of coupons heretofore issued
with any such Tennessee Substitution Bonds (pro-
vided the original due date of such coupons was not
later than July 1st, 1877), who shall have become a
subscriber to this agreement, and who shall have
transferred his coupons to said assignees and attor-
neys, shall be entitled in lieu thereof to receive a new
first mortgage bond or bonds for the amount of his 83
coupons so transferred, estimating each such coupon
at thirty-six dollars, except the coupons maturing
July 1, 1877, which shall be valued at only thirty
dollars each.

*Seventh.*—The trust deed hereinabove provided
for shall be in part for the security of the same class
of present creditors who, as above agreed, are en-
titled to be secured by the said new first mortgage,
to the extent of the difference, as below stated, be- 84
tween the amount of new bonds to be issued to them
or for their benefit, as above provided, and the prin-
cipal amounts of the bonds now outstanding and
transferred by them respectively, and also for the
benefit of the remaining creditors of said company
who shall become parties to this agreement and be-
come entitled to the benefit thereof; and to that
end it is now provided--

85 *Eighth.*—Each bond now held by any such present first mortgage creditor as last aforesaid for the principal sum of one thousand dollars gold or lawful money, or for the principal sum of £225, £205, or £200, shall, for the purpose of ascertaining such difference, be estimated as worth one thousand dollars; and each bond payable in dollars, gold or lawful money, for a less sum than $1,000, shall be estimated at its face, without interest, and each bond payable in sterling money for less than £200
86 shall be estimated at the rate of five dollars for each pound sterling of principal money payable by the terms of such bond. And after charging to each subscriber hereto who shall have transferred bonds as above agreed, the principal amount of the bonds to be issued to him as above provided in the sixth paragraph, not taking into account any bonds issued in lieu of coupons transferred under said sixth paragraph, he shall be entitled to a preferred income and sinking fund debenture or debentures, of
87 the first series to be issued under said trust deed, as hereinafter provided, for the difference between the principal sum of the new first mortgage bonds so charged to him and the principal sum of the bonds so transferred, valued as above provided.

*Ninth.*—The preferred income and sinking fund indebtedness issued under said trust deed may be in sums of $1,000, $500, $300, or $100 each, and shall not have any interest coupons attached thereto, and
88 shall not be payable absolutely, but only out of the sinking fund hereinafter provided; and shall be registered and shall be transferrable only on the books of the company, at the office of the company, in the city of New York, and shall not otherwise be transferable, and shall be issued in successive series, the first series to be known as first preferred income and sinking fund debentures, the second series to be

known as second preferred income and sinking fund 89
debentures, the third series to be known as third preferred income and sinking fund debentures, and the fourth series to be known as fourth preferred income and sinking fund debentures, and such debentures shall be so expressed as that interest at a rate not exceeding seven per cent. per annum shall be payable thereon yearly, that is, on the first day of February in each year after the year 1878, upon the conditions herein specified, that is: on or before the first day of December, in the year 1878, and each year there- 90
after, said company shall ascertain as closely as practicable the net earnings of such company remaining after paying the expenses of the corporation, cost of maintenance and proper repair, and the interest on the new first mortgage bonds up to the first day of September next preceding, that being the end of the fiscal year; and in case there shall remain on such first day of December a residue of earnings for the year ending on the first day of September next previous, and if it shall then be 91
ascertained that up to the first day of September next preceding that first day of December, the earnings of said company, after making provision for such expenses, interest and the proper maintenance of the property in good order, leave any sum applicable to the payment of interest on such debentures, then such net earnings shall be applied to the payment of interest on said first preferred income and sinking fund debentures, not exceeding seven per cent. in lawful money of the United States, and such 92
application and payment shall be made on or before the first day of February in the next succeeding year; and after payment of interest at the rate of seven per cent. per annum on said debentures of the first series, what remains of said net earnings shall be applied to the payment of interest on said debentures of the second series, at a rate not exceeding

93 seven per cent. per annum; and after payment of interest at that rate on said debentures of the second series, what remains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum on said debentures of the third series; and what then remains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum on said debentures of the fourth series; but in case the earnings of any one of such years shall
94 not be adequate to the payment of seven per cent. interest for that year on all other series of said debentures then the deficiency shall not have any claim upon the net earnings of any succeeding year. And the net earnings shall only be applicable tothe payment of interest on either series of debentures in case such earnings shall amount to at least one per cent. or a multiple of one per cent. on the total amount of the debentures belong to such series, so that fractions of net earnings exceeding such one
95 per cent. or a multiple of one per cent. need not be included in the payment of interest for that year, but shall be carried to the credit of the earnings for the succeeding year.

*Tenth.*—The aforesaid second preferred income and sinking fund debentures shall be issued for the benefit and security of that class of the present creditors of said corporation, who are known as second mortgage bondholders, all to be upon the same foot-
96 ing with each other as to security and priority. Each second mortgage bond of said company, and each coupon thereof now outstanding shall be considered as of the par value represented on its face in currency, provided the due date originally specified therein shall not have been later than the first day of March, 1878, except coupons maturing March 1, 1878, which when for $80 on their face shall each be estimated

as worth only twenty dollars, or in that proportion 97
for any coupon of any smaller amount than $80.
Each holder of a present outstanding second mortgage bond or coupon of said company, who shall have become a subscriber to this agreement, and shall have transferred his bond or coupon pursuant to the terms hereof, shall be entitled to receive dollar for dollar for the principal of his bond and coupon so transferred as aforesaid, in a second preferred income and sinking fund debenture.

98

*Eleventh.*—The said debentures of the third series shall be for the benefit and security of the holders of the present outstanding bonds of said corporation, and shall be for an aggregate amount sufficient to represent the aggregate amount of now outstanding convertible bonds, and the interest thereon up to the first day of June, 1877. Each holder of a convertible bond who shall have become a subscriber to this agreement, and thall have transferred his bond as and in the manner aforesaid, shall 99
be entitled in lieu thereof to a debenture of the third series, for the par amount of the bonds so transferred, estimating the same at its face value in currency, and the accrued interest on such convertible bond, to be computed up to the first day of June, 1877, shall be replaced by a debenture of the third series for the actual amount of such interest up to that date.

*Twelfth.*—The said debentures of the fourth series shall be for such amount as said assignees 100
and attorneys shall determine to be necessary for the purpose of satisfying such judgment and unsecured indebtedness of the said company as they shall deem to be morally obligatory, in their discretion, so far as the same shall be held by subscribers to this instrument who shall have transferred their claims to the said assignees and attorneys, subject

to adjustment by said assignees and attorneys, but the same shall not exceed the sum of the face value of such judgments or indebtedness, and no unsecured or judgment creditor shall be admitted as a subscriber to this instrument, nor entitled to the benefit thereof, for any amount exceeding that which may be adjusted and allowed to him by said assignees and attorneys; and each such judgment and unsecured creditor who shall so become a party hereto, shall be entitled to a debenture of the fourth series for such sum as said assignees and attorneys may adjudge to be justly due him.

*Thirteenth.*—In case all the holders of the unsecured or judgment indebtedness of said corporation shall not have become parties hereto, or shall not have assented to the adjustment of their claims by the said assignees and attorneys, and the reduction thereof to the amount which said assignees and attorneys shall deem to be justly and equitably due thereon, then said assignees and attorneys, instead of cancelling and surrendering all of said mortgage bonds now outstanding, transferred to them under this agreement, shall hold said mortgage bonds or so much thereof as may in their discretion be necessary for the security of the new securities against said unsecured and judgment indebtedness, except that the new mortgage and trust deed issued by said corporation shall have priority over such old mortgage bonds; but such original mortgage bonds shall be held by the trustee in the new first mortgage, in trust for the benefit of the holders of the new securities of the said corporstion, according to their order and priority, prior to and to the exclusion of, the unsecured and judgment creditors who shall not have assented to this agreement. And each of said present mortgage bonds transferred under this agreement, and held by said trustees, as before stated,

shall be stamped by the assignees and attorneys with 105
the following words: "In pursuance of the terms of agreement made between the Mobile & Ohio Railroad Company and its creditors, bearing date October 1, 1876, this bond is not negotiable, being held subject to the provisions, and for the purposes mentioned in said agreement."

*Fourteenth.*–The said assignees and attorneys shall not be authorized to cancel or surrender any of the existing obligations or evidences of debt of the said 106
corporation, transferred to them under this agreement, unless all the present holders of the mortgage securities of said company shall have become parties to this instrument, and transferred the securities held by them on or before the first day of March, 1877, or at or before such time as the said assignees and attorneys shall have fixed, as in their discretion they may, by successive extensions of not more than sixty days each; nor until said corporation, or its stockholders, through legal and proper action of its 107
stockholders, if such action be necessary, or otherwise according to law, shall have entered into an adequate and sufficient arrangement or agreement with said assignees and attorneys, and with the holders of said debentures, enabling the holders of said debentures, or the trustees under said trust deed, to vote at elections for directors of the said company, and irrevocably represent such stock, or a majority thereof, at all stockholders' meetings until such debentures shall be extinguished; and 108.
upon that privilege of representation being acquired by and vested in or secured to the trustees in said trust deed, or to the holders of the said debentures, by the proper and legal action of such corporation or its stockholders, and upon all the new mortgages and securities above called for being issued, then such cancellation and surrender may be fully com-

pleted and consummated (except in the contingency provided in paragraph 13 of this agreement), and the property and management of the corporation may be restored to it, and said foreclosure suits may be discontinued.

*Fifteenth.*—Any surplus of new securities created created under this agreement, not required for the satisfaction of the claims of existing creditors, may be applied and appropriated by said assignees and attorneys to the payment of the expenses of making this agreement and carrying the same into effect, as well as the expenses of said foreclosure suits; and the said assignees and attorneys, as transferees and assignees of the subscribers to this instrument, shall have the same rights and relations to the foreclosure suits now pending and to the complainants in said foreclosure suits, and to the receivers of said suits, and to the funds in their hands, which the subscribers to this agreement now have or would have if they continued to be holders of the bonds and claims subscribed thereto, and shall be entitled to the same share of the proceeds of the present management of the property of said company, and to the same share of the proceeds of the sale of such property which their assignors would have upon a discontinuance of said foreclosure suits, or upon an accounting, or upon a sale or distribution of the proceeds; their several assignors to be considered, in relation to such proceeds, as being upon the the same grade of priority and security, as between and among each other, upon which the provisions of this agreement would place them in relation to the new securities to be issued by said company.

*Sixteenth.*—In case a sufficient number of subscribers shall not be obtained to this agreement on or before the time prescribed herein, to put it within the power of said assignees and attorneys to carry

into effect the foregoing clauses and stipulations of 113
this agreement, then this agreement shall be binding upon the subscribers thereto, provided it shall have been subscribed by holders of at least a majority in amount of the existing first mortgage indebtedness and Tennessee Substitution Bonds of said company, as recited in the schedules hereto annexed; and thereupon said assignees and attorneys shall have power and authority to appropriate the bonds, coupons, moneys (if any), and evidences of debt which shall have come into their possession, under the 114
provisions of this agreement, towards the purchase of the property of said railroad corporation, under such decree or decrees of foreclosure as shall be obtained in said pending suits, and shall have power and authority, and it shall be their duty, to aid the complainants in said suits in speeding said suits to their conclusion by decrees of foreclosure and sale, or of strict foreclosure, in the interest and for the benefit of the subscribers to this agreement, and they shall have power to turn the securities, re- 115
ceived by them under this agreement, into Court in payment for said property, upon the purchase thereof by them upon the foreclosure; and in the event of its becoming necessary for the protection of the interest of the parties subscribing thereto, that any cash or other payment than the securities in their possession should be made into court, said assignees and attorneys shall have power to make such payment for the account of and at the risk of the parties subscribing hereto, or by obtaining the 116
amount thereof upon the security of the bonds and coupons in their hands; and shall likewise have power to apply for and receive dividends upon the bonds and coupons received by them under this agreement from the funds in court in the hands of the receivers, or of any master or marshal or clerk or otherwise to the same extent as the original

holders of the bonds and coupons retained and held by them would have been ; and while no authority is given to them to make any subscribers hereto personally responsible for the payment of any debt incurred by them, they are authorized with the assent of the trustees of the present first mortgages, or a majority of them, to pledge the bonds and coupons in their possession for the purpose so far as necessary of obtaining means to expedite, and bring to a conclusion this compromise or said forclosure suits.

*Seventeenth.*—The parties subscribing hereto and transferring any evidence of debt or claim according to the terms of this instrument, shall be entitled to certificates, specifying their contributions respectively and their interests respectively to and in this agreement and the benefits thereof ; and each certificate shall be transferrable and deliverable to bearer without a transfer being required to be made in any book or in writing, and shall represent on its face the securities deposited therefor.

*Eighteenth.*—Upon the purchase of the property of said company by said assignees and attorneys at any sale or sales under decree of sale or strict foreclosure, it shall be their duty to avail themselves of any existing law in either of the States of Alabama, Tennessee, Mississippi or Kentucky, or to procure legislation, so far as may be necessary, for the purpose of creating a new corporation or new corporations to which it shall be their duty to transfer the property so purchased by them as early as practicable upon receiving from such new corporation the new bonds, debentures, mortgage and trust deed hereinabove specified for the same amount which would be required to carry the above proposed compromise into effect, such mortgage and trust deed to be made to one or more trustees in each case to be

selected by said assignees and attorneys, and to be 121
properly framed for the security of the several classes of creditors to be benefited thereby ; and so far as the evidences of debt to be issued under such new mortgage or trust deed, whether by said Mobile & Ohio Railroad Company, or by a new corporation, shall not be required to be issued or delivered in exchange for securities which shall have come into and remained in the hands of such assignees and attorneys under this agreement, such surplus securities shall be sold, or so much thereof as in their judg- 122
ment shall be necessary for the purposes hereinafter named ; and the proceeds thereof, and also any sums received by them in cash from the receivers, or from any officer of the court, shall be applied, in the first place, in repaying any sums advanced, or procured to be advanced, by said assignees and attorneys for the purpose of meeting the expenses of said foreclosure suits and of carrying this agreement into effect, and the expense of making such purchase and reorganization ; and then the surplus, if 123
any, remaining from such disposition of such new securities, as well as any new securities which may remain unsold or undisposed of, and any sums realized by said assignees and attorneys from the receivers or managers of said property in said foreclosure suits, or from the management or running of the road, shall be accounted for by said assignees and attorneys to said new corporation, which said new corporation is to consist of and be created by the subscribers to this agreement, so far as they are 124
entitled to the benefit of the same ; and said new corporation, or said existing corporation, in case the compromise above specified shall be carried into effect, shall be considered as subrogated to all the rights of the subscribers to this agreement, for the purpose of calling the said assignees and attorneys to account. The said assignees and attorneys shall

125 be allowed out of the fund, for compensation for their services and responsibility, such amounts as shall be reasonably just according to the character of such services and responsibility; but there is no personal responsibility on the part of any subscriber hereto for any part of such compensation; and said assignees and attorneys, and their necessary clerks, bookkeepers, and their employees of any grade or description, shall be entitled to a lien upon the new securities, and upon the cash received by said assig-
126 nees and attorneys, and the cash proceeds of such of the same as they are authorized to dispose of, for their compensation, liabilities and disbursements, whether absolute or contingent, until their account shall have been duly and properly settled with such organization; and such existing corporation, or such new corporation or corporations, as the case may require, shall, before payment of interest on any of the new securities, assume and pay any excess of such compensation, liabilities and disburse-
127 ments above the amount realized by said assignees and attorneys from funds in their hands.

*Nineteenth.*—The subscribers hereto, who shall respectively have transferred to said assignees and attorneys their several claims, provided such claims shall remain under the control of such assignees and attorneys, and available for the purpose of purchasing the property now mortgaged in said foreclosure suits, shall be interested in the property after such
128 purchase, and so long as the title thereto remains in said assignees and attorneys, as beneficiaries and *cestuis que trust*, in the same proportions, and shall have the same relative rights and interests, as against each other, as in the new securities to be created under this agreement.

*Twentieth.*—The trust deed hereinabove provided for, whether executed in pursuance of the compro-

mise agreed upon, or by a new corporation or corpo- 129
tions to be created after a foreclosure, shall contain provision for the creation of a sinking fund for the benefit of the holders of said debentures in the order in which the interest on such debentures is as above specified payable.

Such sinking fund is to consist of the proceeds of all lands owned, and which may hereafter be owned by said company, with the exception of such as are covered by the above mentioned first mortgage, and with the exception of the railway, rails, bridges, 130
fences, warehouse and other fixtures, rights, privileges and real estate belonging to the above mentioned branches, but including all lands not so covered, but conveyed to the Mobile and Ohio Railroad Company by any State or by the United States. The trustees under said trust deed are to have power of sale over said lands from time to time, and such trust deed shall contain clauses properly framed conveying to trustees under such deed the same powers of sale in respect to the lands conveyed 131
thereby as are possessed by the trustees under the now existing first mortgage ; and the first mortgage to be created under this agreement is not to apply to or cover such lands, and the proceeds of sales of such lands are to be free from the lien of said new first mortgage, and are to constitute a fund for the exclusive benefit of the holders of said debentures. But such new trust deed shall also contain a provision by way of covenant, declaration, grant or otherwise, as said assignees and attorneys may direct, in 132
substance and effect that the amount of principal and interest payable upon said debentures shall constitute a lien upon the railway property of said existing corporation, or of said new corporation or corporations, as the case may require, to such an extent that in case of a foreclosure of said new first mortgage and a sale thereunder, the trustees in said

trust deed, for the benefit of holders of said debentures according to their order and priority, shall be entitled to the surplus proceeds of such sale next after payment of said new first mortgage, to the amount of the aggregate principal sum due on such debentures, and so that in case any lien upon said railway property, or any part thereof, shall arise, subsequent to the making of said trust deed, by the act or sufferance of such existing or new corporation, and such subsequent lien shall be enforced to the extent of depriving said existing or new corporation of the possession of such railway property, or any part thereof, then the trustees in said trust deed may enter into possession of such part of said railway property, and sell the same, clear of all subsequent liens, for the benefit of holders of said debentures according to their order and priority, or may exact redemption and payment in full of the principal amount of such debentures before surrendering such property to such subsequent lienors; and said trust deed shall also contain proper covenants and securities, for the ascertainment and application of the income of the property of said existing or new corporation and its successors, as the case may require, according to the provisions of this agreement; and there shall be paid into the sinking fund all the interest accruing on debentures bought for the sinking fund, until all the debentures shall have been bought, satisfied or extinguished, and there shall also be paid into the sinking fund a further amount equal to the dividend which may hereafter be declared upon the capital stock now existing or hereafter to be created of such company, which dividend shall not be declared or paid except an amount equal thereto is also paid in at the same time out of the net revenue into the sinking fund.

The Trustees making sales of said lands are to deposit the proceeds thereof in the Bank of the State

of New York, in the city of New York, or such other 137
depository as the trustees in said trust deed may select in the said City of New York; and each six months, that is, on the first days of May and November, the trustees shall advertise in the cities of Mobile and New York, stating the amount so deposited and at the disposition of the sinking fund, and asking for tenders thereof in the first series of said debentures then outstanding, awarding the amount so deposited to the holders of debentures, tendered at the lowest grades of price, in succession. In de- 138
fault of any bids or tenders therefor at less than par, the trustees shall thereupon draw by lot a sufficient number of debentures of the first series then outstanding, to absorb such deposits, and shall apply such deposits to the purchase of the debentures so drawn by lot at par. After purchase of the said debentures of the first series, the said sinking fund shall be applied in like manner, and by the same means, to the purchase of each other of the said several series of debentures in succession. 139

*Twenty-first.*—In case a prosecution of said foreclosure suits to a sale or to a strict foreclosure is found to be necessary, and it shall also be found necessary to create a new corporation or corporations, then the capital stock of such new corporation or corporations shall be fixed at not exceeding the sum of ten million dollars, to be divided into shares of one hundred dollars each, and shall be in the first instance issued to said assignees and attorneys as a 140
part of the funds in their hands for the purposes of this agreement; and they shall so place a majority of such stock as to secure to the holders of said debentures directly, or through the trustees in said trust deed, the control of the management of the corporation, and any surplus of such new stock remaining after that disposition of it, and after the

trust under said trust deed shall be fully executed, shall be treated in like manner with any surplus bonds or other securities, to be issued by The Mobile and Ohio Railroad Company, or by a new corporation or corporations, under the provisions of this agreement.

*Twenty-second.*—Bonds, securities, claims, and evidences of debt, transferred to said assignees and attorneys under the provisions of this agreement, shall be deposited, at the option of the parties transferring the same, either in The Farmers' Loan & Trust Company, in the City of New York, or in the Bank of Mobile, at Mobile, in the State of Alabama, or with C. M. Lampson & Co., in the City of London, or at the Frankfurter Bank Verein, in the City of Frankfurt, or with Lombard, Odier & Co., in the City of Geneva, who shall respectively be authorized to give therefor the certificates above provided for, or their receipts exchangeable for said certificates; and the securities so deposited shall remain in the several depositories subject to the order of said assignees and attorneys, until the same shall be required for cancellation, surrender, exchange, or delivery into court by said assignees and attorneys, or for other purposes of this agreement, in which case the same shall be transmitted from the depositories thereof to such attorneys and assignees, either at The Farmers' Loan & Trust Company, in the City of New York, or at the Bank of Mobile, in the City of Mobile, as said assignees and attorneys may direct, from which depositories the same may be taken by said assignees and attorneys when required for any or either of the purposes aforesaid; and securities and cash funds received by said assignees and attorneys, under the provisions of this agreement, shall be deposited by them, either in The Farmers' Loan & Trust Company, in the City of New York, or in the Bank of Mobile, in the City of Mobile

*Twenty-third.*—In case of a vacancy in the office 145
of assignee or attorney under this agreement, arising from the death or resignation of either of the parties, or from his incompetency to act, the vacancy may be filled by the unanimous agreement of the trustees acting under the existing first mortgage of said corporation, and the remaining assignees and attorneys under this agreement.

*Twenty-fourth.*—The said assignees and attorneys shall have an office in the City of New York, and 146
shall keep regular accounts and books of account, showing their transactions, which shall be open to the inspection of certificate holders at reasonable times during business hours, and a majority of said assignees and attorneys shall be competent to transact business at any meeting of which all three of the assignees and attorneys shall have been notified, and any substituted assignee or attorney, duly appointed pursuant to the provisions of this agreement, shall have the same power, authority, and 147
control which his predecessor had; and all the provisions of this agreement, and all the powers conferred thereby, shall apply to and be vested in such assignee and attorney so far as his predecessor had such power, or was subject to such provisions; but so far as any discretionary power is conferred by this agreement, no such discretion shall be, or can be used, without the consent of all the attorneys and assignees acting at the time under this agreement, assignees acting at the time under this agree- 148
ment, and each assignee and attorney shall be responsible only for his own acts, and not for the acts of others; and neither assignee or attorney shall be responsible for any error of judgment, nor for any error or negligence of any subordinate officer or agent, unless such officer or agent shall be employed or continued in employment negligently by such assignees and attorneys.

149 *Twenty-fifth.*—The new securities to be issued by said Mobile & Ohio Railroad Company, or by a new corporation or corporations to be created under the terms of this agreement, shall be in the first instance delivered by the said company to said assignees and attorneys, or their successors, who shall deposit the same in the said The Farmers' Loan & Trust Co., or in the said Bank of Mobile, and no subscriber hereto or his successor in interest shall be entitled to any portion of such new securities except upon a return
150 or surrender in said assignees and attorneys at one or other of the said places of deposit of the certificate or certificates held by such subscriber. In case in the original distribution of the new securities to be issued in pursuance of this agreement, any party shall become entitled to a fractional part, less than $100, of a bond or debenture, a certificate therefor may be issued, which, when united with other fractional certificates, so as to make an entire bond or debenture, for either one of the even amounts in
151 which said bonds or debentures are above authorized to be issued, may be funded in such bonds or debentures of even amounts, as the case may require.

*Twenty-sixth.*—The assignees and attorneys acting under this instrument are hereby invested with full power and authority to execute the provisions of this plan; to supply any and every defect, in any and every case which is unprovided for in its terms, and to do anything and everything that is proper in their judgment to carry out its provisions.
152

*Twenty-seventh.*—The said assignees and attorneys may, in the transaction of business, call themselves "The Committee of Reorganization of the Mobile & Ohio Railroad Company," and, when acting in that name, shall be considered as acting as attorneys, agents, managers and assignees under this agreement. In the adjustment of their accounts

they shall be allowed such payments and expendi- 153
tures as shall have been made by them in good faith, in the belief of the necessity of making such payments and expenditures for the benefit of the subscribers hereto, and for the purpose of carrying this agreement into effect.

*Twenty-eighth.*—All bonds, securities, and evidences of debt, &c., transferred under this agreement, shall be in the first instance deposited for the purposes of this agreement in one or the other of the 154
depositories herein named, or in others selected as authorized by this agreement; and all new securities to be issued by the present corporation, or by a new corporation, shall, in like manner, be deposited with one or the other of said depositories, to be by such depository distributed to the parties entitled thereto, under the order and with the assent and approval of the assignees and attorneys; and in the transmission of either the present or future securities in fulfillment of this agreement, the assignees, attorneys, 155
and depositories, using due diligence, may, in their discretion, insure or otherwise protect such securities at the expense of the fund, and in case of loss shall be relieved from liability.

*Twenty-ninth.*—Any duplicate or other copy of this agreement which shall be subscribed by any holder of the said bonds, securities, liens, claims, judgments, or stock, and delivered to and accepted by said assignees and attorneys, shall have like ef-
fect as if such signatures were herewith subscribed. 156

157 EXHIBIT NO. 2.—W. H. D. L., N. P.
*To Deposition of W. Butler Duncan.*

MOBILE & OHIO R. R. CO.

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NEW ISSUES

UNDER THE

158 Agreement for the Re-adjustment of the Securities, &c., of the Mobile & Ohio Railroad Company,

DATED OCTOBER 1st, 1876.

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*Form of Mortgage.*
" *Deed of Trust.*
" *Assignment of Securities, &c.*
" *Power of Attorney.*
" *Bond.*
159 " *Debenture.*
" *Stock Certificate.*

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MOBILE & OHIO R. R. CO.

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Mortgage, $7,000,000.

*Dated May* 1, 1879.
*Due December* 1, 1927.
160 *Interest* 6 *per cent. per annum.*
*Payable June and December.*

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THE FARMERS' LOAN & TRUST CO., TRUSTEES.

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Date. *This indenture*, made this first day of May, 1879, by and between the Mobile and Ohio Railroad Com-

pany, a body politic and corporate, duly created and existing under and by virtue of the laws of the States of Alabama, Mississippi, Tennessee and Kentucky, party of the first part, and William Butler Duncan, as surviving Receiver of the property of said company, duly appointed by and acting under the authority of the Circuit Court of the United States for the Southern District of Alabama, and of the Circuit Court of the United States for the Western District of Tennessee, and of other Courts of the United States, party of the second part, William H. Hays and T. Haskins Du Puy (survivors of William S. Pierson, deceased), as the agents, assignees and attorneys of creditors of said corporation, and as a "Committee of Reorganization" under the agreement and transfer of October 1st, 1876, hereinafter mentioned, parties of the third part, and The Farmers' Loan and Trust Company, a body politic and corporate, duly created and existing under and by virtue of the laws of State of New York, and authorized to execute the trusts hereby created and herein expressed, party of the fourth part. 161 Parties. 162 163

Whereas, the said The Mobile and Ohio Railroad Company was, by an Act of the Legislature of the State of Alabama, approved the third day of February, 1848, created a body politic and corporate, and by that name was, among other things, vested with all the powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of said Act; and Recitals. Alabama Incorporation.

Whereas, said Act was amended by an Act passed by the Legislature of the State of Alabama on the 5th day of January, 1850; and 164

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Mississippi, approved February 17th, 1848, which Act was amended on the 4th of March, 1850, granted within the State of Mississippi the same rights, powers and Mississippi Incorporation.

privileges as had been and are granted within the State of Alabama by the Legislature of the State of Alabama to the said Railroad Company, with certain exemptions which appear in said Act of the Legislature of the State of Mississippi, and the amendment thereto; and

Tennessee Incorporation.

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Tennessee, approved February 28th, 1848, created a body politic and corporate within the State of Tennessee, with the rights, powers, privileges and immunities in said Act specified; and

Kentucky Incorporation.

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Kentucky, approved February 26th, 1848, granted within the State of Kentucky all the privileges, rights and immunities granted and belonging to the said Railroad Company within the State of Alabama; and

First Mortgage, 1853.

Whereas, the said Railroad Company, on or about the first day of November, 1853, in and by a certain indenture of mortgage or deed of trust duly executed by it under its corporate seal, bearing date on that day, granted and conveyed the property therein described to Morris Ketchum, John J. Palmer, and William R. Hallett, as trustees, for the purpose of securing the payment of an issue of bonds in said mortgage or deed of trust described; and

Whereas, a large number of the bonds in and by the said mortgage or deed of trust described and secured, were afterwards issued by said Railroad Company and put in circulation, with coupons for interest payable semi-annually thereto attached; and

Second Mortgage, 1860.

Whereas the said Railroad Company, on or about the fifteenth day of February, 1860, by a certain indenture of mortgage or trust deed known as the second mortgage, bearing date on that day, duly exe-

cuted by said Company under its corporate seal, granted and conveyed the property therein described, to Robert A. Baker, George H. Young and Samuel Williams, as trustees, for the purpose of securing the payment of the particular issue of bonds therein described: and 169

Whereas, a large number of the bonds in said mortgage of 1860 described and provided for, were afterwards issued and put in circulation by said Railroad Company; and

Whereas, the said Railroad Company, on or about the first day of July, 1871, in and by a certain other indenture of mortgage or trust deed, bearing date on that day, granted and conveyed the property therein described (the same being situate within the limits of the State of Tennessee), to William Butler Duncan, Adrian Iselin and Richard T. Wilson, as trustees, for the purpose of recognizing and declaring the lien, and securing the payment of the issue of bonds in said mortgage or deed of trust of July 1st, 1871, mentioned; and 180 Tennessee Substitution Mortgage 1871. 171

Whereas, said bond in said mortgage of July 1st, 1871, described and provided for were afterwards issued and put in circulation; and

Whereas, the said Railroad Company, on or about the first day of January, 1874, in and by a certain other indenture of mortgage or deed of trust, bearing date on that day, granted and conveyed the property therein described to William Butler Duncan and Samuel L. M. Barlow, as trustees, for the purpose of securing the payment of the several issues of bonds in said mortgage or deed of trust of January 1st, 1874, described; and Consolidated Mortgage, 1874. 172

Whereas, W. Butler Duncan and A. Foster Elliott became duly substituted in the place and stead of Morris Ketchum, Jno. J. Palmer and W. R. Hallett, as trustees, of the mortgage first herein above described or referred to; and Trustees Substituted.

173 Whereas, on or about the 8th day of May, 1875, the said W. Butler Duncan and A. Foster Elliott, as trustees under said mortgage of 1853, took possession of the mortgaged property therein described, and afterwards commenced suits in the Circuit Court of the United States for the Southern District of Alabama and in other courts for the foreclosure of said mortgage of 1853, and for the sale of the mortgaged property; and

First Foreclosure suit.

Whereas, on the 14th day of March, 1876, another
174 suit was brought in the said first-mentioned court by said Morris Ketchum, claiming to be trustee under said first mortgage, to foreclose the same, and for the sale of the mortgaged property; and

Second Foreclosure Suit.

Whereas, on the 2d day of April, 1877, another suit was brought in the same court by D'Oreli Ziegler and others, claiming to be the holders of mortgage bonds issued under and secured by said mortgage of 1853, to foreclose said mortgage of 1853, and for the sale of the mortgaged property; and

Third Foreclosure Suit.

175 Whereas, said several actions were by an order of the said Circuit Court of the United States for the Southern District of Alabama, made on the 6th day of June, 1877, consolidated, and pursuant to said order of said actions, as so consolidated, proceeded to a decree which was rendered by said Circuit Court of the United States for the Southern District of Alabama on the 15th day of June, 1877, which said decree was afterwards on or about the 30th day of May, 1878, affirmed by the Supreme Court of the United States; and

Consolidation of Suits.

Decree in Consolidated Suits

176

Whereas, on or about the 27th day of May, 1875, a suit was brought by W. Butler Duncan, Adrian Iselin and Richard T. Wilson, in the Circuit Court of the United States for the Western District of Tennessee, for the purpose of enforcing the lien declared in and recognized by the said mortgage of 1871, and for the sale of the mortgaged property therein described; and

Foreclosure Suit under Tennessee Substituted Lien.

Whereas, said last-mentioned suit proceeded to final decrees, which were rendered by said Circuit Court of the United States for the Western District of Tennessee, on the 20th day of May, 1876, and on the 12th day of November, 1877; and

177 Decree in Tennessee Suits.

Whereas, nearly all the holders of the outstanding bonds secured by the said several mortgages or deeds of trust, and by the said decrees of the said Courts, as well as nearly all the holders of other evidences of debt issued by the said Railroad Company, and of other claims outstanding against said Railroad Company, did in and by and pursuant to an agreement and transfer, bearing date October 1st, 1876, assign and transfer their respective claims and demands, and deliver the possession thereof, to said William H. Hays, William S. Pierson and T. Haskins Du Puy, of whom the said Hayes and Du Puy are the survivors, to which agreement and transfer of October 1st, 1876, reference is hereby made, as if the same were herein recited; and

178 Claims assigned to Committee of Reorganization.

Whereas it was agreed between the said Hays, Pierson and Du Puy, and the said Railroad Company, that the said Railroad Company should issue and deliver to said Hays, Pierson and Du Puy, and their survivors or successors, new bonds and debentures, in which should be expressed the sums of principal money and interest which, upon the conditions and contingencies herein expressed, should be received and taken in full payment and discharge of the claims so as aforesaid assigned to said Hayes, Pierson and Du Puy, but which, in the meantime, before the happening of such contingencies, are to be considered as evidence of the sums payable by said Railroad Company, in order finally to obtain the full benefit of the agreements of compromise, extension and forbearance herein mentioned, and of the time at which, and the conditions upon which, such sums are to become payable; and

179 Issue of New Securities to Committee of Reorganization.

180

181 Whereas the said William H. Hayes, William S. Pierson and T. Haskins Du Puy, by virtue of the authority conferred upon them by said agreement and transfer of October 1st, 1876, agreed upon a compromise, extension and forbearance of the said claims so transferred to and held by them as aforesaid, and so have agreed to accept said new bonds and debentures upon the conditions herein expressed, the terms of which compromise, extension and forbearance are as follows, namely: (1) that so far as said Railroad Company shall pay or cause to be paid the principal sums expressed in the bonds or debentures provided for by said agreement of October 1st, 1876, or the interest accruing thereon, pursuant to the terms of said bonds and the coupons thereto attached, and pursuant to the terms of the said debentures, such payments shall, in any event, be applied in extinguishment and discharge of an equal amount of the said indebtedness as aforesaid assigned to said Hayes, Pierson and Du Puy; (2) that in case all lawful claims against said Railroad Company which have arisen prior to the date of this instrument, and which have not yet been assigned to said Hays, Pierson and Du Puy, shall be assigned and transferred to said Hays and Du Puy, or their successors, or to the said The Farmers' Loan and Trust Company, under and pursuant to said agreement of October 1st, 1876, or in any manner satisfied, cancelled or extinguished by said Railroad Company, or out of its property or income, or otherwise, then all the claims so assigned and transferred shall thenceforth be deemed to have been paid and satisfied by the new bonds and debentures herein mentioned, and such assigned claims shall be, then and in that case, for all purposes and intents, cancelled and extinguished, and the said Railroad Company released therefrom; (3) that the said Hays and Du Puy, and their successors, and The Farmers' Loan and Trust Company shall not

Agreement of Compromise, Extension & Forbearance.

182

When Existing Liens partially Satisfied.

183

When Existing Liens Finally Satisfied.

184

nor shall either of them enforce or put in execution against said Railroad Company either of the said decrees, nor any of said assigned claims, so long as payment of the interest and principal mentioned in said new bonds, coupons and debentures, respectively, shall be made as aforesaid, unless the property of said Railroad Company, or some portion thereof, shall be exposed for sale, attached, seized, sequestrated or taken for the purpose of being applied towards satisfying some claim secured by some one of said decrees and not assigned pursuant to said agreement of October 1st, 1876, or some claim against said Railroad Company which has not been so assigned or transferred, and which has arisen prior to the date of this instrument, but (4) that upon default in the payment of said last-mentioned interest or principal, or upon the property of said Railroad Company, or any part thereof, being exposed for sale, attached, seized, sequestrated or taken for the purpose of being applied towards satisfying any claim secured by any one of said decrees, and not assigned pursuant to said agreement of October 1st, 1876, or any claim against said Railroad Company which has not been so assigned or transferred, and which has arisen prior to the date of this instrument, then said Hays and Du Puy, and their successors and assigns, holders of said claims so assigned may enforce said assigned claims and said decrees (so far as the same remain unsatisfied) for the benefit of the holders of the said new bonds and debentures, as if such holders of said new bonds and debentures were still entitled respectively to the proceeds of said assigned claims to the same extent as when the same were respectively assigned, except so far as such claims shall have been in fact paid under the operation of said agreements; (5) that until said claims so assigned shall be satisfied in manner aforesaid and pursuant to the terms

185 Agreement of Forebearance.

186

187

188 Power to Enforce Decrees.

189 aforesaid, the several and respective holders of the new bonds and debentures provided to be issued as aforesaid, shall be beneficially interested in said assigned claims and the proceeds thereof, and the amounts of money or property collectible or realizable thereon or purchaseable or purchased therewith, in the same proportions and according to the same order and priority in which they are, or may be, from time to time, interested in said new bonds and debentures; (6) that after satisfaction of the

Interest of New Securities in Existing Liens.

190 said new bonds so to be issued in case the same shall be satisfied by means of a sale, the remaining proceeds of said sale shall be appropriated to the use and benefit of the holders of said debentures, according to the order and priority of such debentures, as fixed by said agreement of Oct. 1, 1876; (7) that in case said decrees, or either of them, shall be enforced, and a sale shall be made of any of the property covered thereby, the said assigned claims shall and may, so far as they may remain unsatis-

Disposition of Proceeds of Sale.

191 fied, be used and appropriated according to the terms and provisions of said decrees respectively in the purchase of the property so brought to sale, and that thereupon the title so acquired by such use and appropriation of such assigned claims shall become and be subject to the lien of this mortgage and the bonds secured thereby, and also to the lien, operation, and effect of the deeds of trust made simultaneously herewith for the benefit of the holders of preferred income and sinking fund de-

Authority to use Existing Liens to Purchase.

192 bentures; and

Whereas said new bonds are now about to be issued accordingly, and are to be substantially in the following form:

(Form of Bond.)

"The Mobile & Ohio Railroad Company acknowledges itself to be indebted to the bearer, or to

the registered holder hereof, for value received, in 193
the sum of one thousand dollars in gold coin of the United States of the present standard of weight and fineness, and hereby promises to pay such sum to the bearer hereof, or to the registered holder hereof, at its agency in the City of New York, on the first day of December, A. D. 1927, and also meanwhile to pay the interest thereon at the rate of six per cent. per annum, as expressed in the coupons herewith issued, on the first days of June and December respectively in each year, on the presentation 194
of the said coupons as they severally become due.

"This bond is issued under and in pursuance of certain agreements for the compromise, extension and forbearance of the original indebtedness of the said The Mobile & Ohio Railroad Company, and is not received by the holder in payment or extinguishment of such original indebtedness in whole or in part, except as provided for in and by the agreements and mortgage herein referred to; and it is one of an issue amounting in the aggregate to seven mil- 195
lions of dollars principal money, and is entitled to the benefit and security of certain degrees establishing and adjusting such original indebtedness until such decrees shall be satisfied, cancelled or extinguished, as well as to the benefit of a mortgage made by the said The Mobile and Ohio Railroad Company to the Farmers' Loan and Trust Company, as Trustees, bearing even date herewith, and to the benefit of the covenants and conditions in said agreements, decrees, and mortgage contained, and is issued sub- 196
ject to the rights given and conferred by said agreements, decrees, and mortgage, to all of which reference is hereby made. And it is agreed that in case payment of any of the coupons issued with this bond shall be refused upon presentation of such coupon as provided therein at or after the maturity of such coupon, and if such non-payment shall con-

tinue for the space of six months after such presentation, then and in that case the principal sum secured by this bond shall become and be immediately due and payable, anything herein contained to the contrary notwithstanding.

"The holder of this bond may, from time to time, have the same registered on the books of said Railroad Company, on payment of such fee therefor and under such regulations as the Company may establish, such registry being noted on the bond itself by the Company's transfer agent, after which no transfer shall be valid unless made on said books by the registered holder, in person or by attorney duly authorized, and simultaneously noted on the bond, but the same may be discharged from registry by being in like manner transferred to bearer, after which it shall be transferable by delivery. The registry of the bond as above shall not restrain the negotiability of the coupons by delivery, but the coupons may be surrendered and interest on the bond will thereafter be payable only to the registered holder of the bond.

"This bond shall not be entitled to the benefit of the security provided as above, nor operate against said Company as an evidence of debt or otherwise until there shall be endorsed hereon a certificate signed by the Farmers' Loan and Trust Company or its successors, identifying the same as being one of the bonds issued under the said mortgage of seven millions of dollars.

"In testimony whereof, the said The Mobile and Ohio Railroad Company has hereunto set its corporate seal and caused these presents to be attested by its President and Secretary, the day of 1879.

*President.*"

*Secretary.*"

(Form of Coupon):

"The Mobile & Ohio Railroad Co. will pay bearer, in any lawful money of the United States, the sum of thirty dollars, on the first day of
18 , at the agency of the said Company, in the City of New York, or at Mobile, at the option of the holder hereof, being interest on mortgage bond, No.

*Treasurer.*"

And whereas it was agreed that the said bonds shall be issued to said Hays and Du Puy, as survivors of the said Pierson, and disposed of and appropriated by them pursuant to the terms of said agreement of October 1st, 1876, without, however, being received in present payment or extinguishment of the claims so assigned to said Hays, Pierson and Du Puy, in whole or in part, but being received by said Hays and Du Puy and disposed of under said agreement only as conditional payment and extinguishment of such claims, and to be final and full payment only upon the conditions above expressed; and it is also agreed by said Railroad Company with said Hays, Pierson and Du Puy that in case any of the property of the said Railroad Company shall be taken or seized in execution or by any creditor for the purpose of sale, or for the purpose of satisfying the claims of such creditor, or in case any person who has failed or omitted or refused to transfer or assign his claim to the said Hays, Pierson and Du Puy, or to the survivors of them or their successors, and who is entitled to the benefit of either of said decrees, shall insist upon and succeed in bringing to execution either of the said decrees; or in case that said Railroad Company shall make default in the payment of the interest on any of the said bonds, of

205 which the form is hereinabove set forth, and such interest shall remain in arrear and unpaid for the space of six months; or in case said railroad company shall make default in the payment of the principal of any of the said bonds of which the form is above set forth, then, in any or either such cases, the said indebtedness, as well that secured by the mortgages and decrees hereinbefore recited, as the other indebtedness and claims assigned to said Hays, Pierson and Du Puy, or the survivors of them or 206 their successors, so far as the same shall not previously have been cancelled, satisfied, reduced or extinguished, may, upon an equal footing as to grade and priority of security with the holders of like or correspondent claims not assigned to the said Hays, Pierson and Du Puy, or the survivors of them or their successors, be immediately enforced in full for the benefit of the holders of the new bonds and debentures; and

In Case of Default.

Relative Position of Claims.

207 Whereas the said railroad company has also issued and delivered simultaneously herewith a trust deed to secure the payment of the four several series of debentures called for and specified in the said agreement of October 1st, 1876; and

Debenture Trust Deed.

Whereas the said William H. Hays, William S. Pierson and T. Haskins Du Puy, pursuant to the terms of the said agreement of October 1st, 1876, designated the Farmers' Loan and Trust Company, of the city of New York, to be the trustee under this mortgage:

Designation of Trustees.

208 Now this indenture witnesseth that the said party of the first part, in consideration of the premises and of the sum of one dollar to it in hand paid by said party of the fourth part, at or before the execution and delivery of these presents, the receipt whereof is hereby acknowledged, and by and with the consent of the said parties of the second and third parts, testified by their execution of these presents, hath

Consideration.

granted, bargained and sold, assigned, transferred, conveyed, released, and set over, and by these presents doth grant, bargain and sell, assign, transfer, release, convey and set over, unto the said party of the fourth part, and to its successors and assigns, in fee simple, all and singular the entire railroad of said party of the first part now acquired, constructed, completed, owned and possessed, extending from Mobile, in the State of Alabama, to Columbus, in the State of Kentucky, a distance of four hundred and seventy-two miles or thereabouts, together with the tracks of said railroad or roadway, as now existing or hereafter to be acquired, and the superstructure and rails laid and to be laid thereon, and all the appurtenances thereof, and all the sidings, turnouts, bridges, viaducts, culverts, ways and rights of way, and lands and premises whatsoever, with the improvements thereon, and all erections, fences, walls and fixtures belonging or appertaining to, or provided or used or intended to be used for the purposes of, or in connection with said railroad, and all the depots and stations and depot grounds now or hereafter belonging or appertaining to said railroad, and all lands and real estate provided, held, used or designated to be used for such depot grounds and all the building and repair shops, carhouses, engine houses and other buildings and structures whatsoever, belonging or appertaining to or used or designed to be used for or in connection with said railroad, and also all the present and future rolling stock of said railroad, and all locomotives, passenger cars, freight cars, and all other cars, carriages, tools, machinery, fuel, rails and materials, and things of whatsoever kind (whether for or in connection with the road itself or its rolling stock or equipment, or for work or machine shops, or construction or repairs of any kind) now belonging or appertaining to, or used, procured or designed for

213 the purposes of said railroad, or the completion, maintenance or operation thereof, or hereafter procured, acquired or held for any such purpose, and also (except as hereinaffer stated) all the lands and real estate situated in any of the said States of Alabama, Mississippi, Tennessee or Kentucky, with the appurtenances thereof, which the said party of the first part may hereafter acquire, for the purposes of or in connection with its above mentioned line of railroad, or any straightening or alteration of the line
214 of the same, o rfor the purposes of or designed for depot grounds or stations, or sites for shops, car houses or buildings, or improvements of any kind whatsoever, used or intended to be used for the purposes of the said railroad, and all and singular the franchises, easements, rights, privileges, interests and immunities, income, rents, tolls, profits, benefits and advantages belonging or appertaining to or connected with said Railroad Company, or to arise or accrue from the said railroad above described
215 and mortgaged, with its appurtenances, and the maintenance and operation thereof, and all property, both real and personal, of every kind and description, acquired and to be acquired in the said last-mentioned States for the uses and purposes of said railroad, including also all property in the possession of the Receivers appointed by either of the said Circuit Courts of the United States, which it is the intention and expectation of said Railroad Company to have delivered to it by permission of said
216 Circuit Courts, and which it covenants to hold, when possession thereof shall be delivered to it, subject to the liens hereby created and acknowledged,

Exemptions From Mortgage.

but not including in, and saving and excepting from this grant, transfer, assignment and mortgage, the several branches of said main line, heretofore possessed by said Railroad Company or by said Receivers, or which shall be hereafter acquired or constructed, and not including in, but excepting from,

this mortgage the branches known respectively as the Aberdeen Branch, Gainesville Branch, Starkville Branch and Columbus Branch, and not including in, but saving and excepting from, this mortgage all unsold and unappropriated lands heretofore granted to said Railroad Company by any of the States, or by the United States, and all lands which may be situated apart from the line of the road and not actually required for use or running of the road: To HAVE AND TO HOLD the said premises hereinabove described to the said The Farmers' Loan and Trust Company, and its successors in the trust hereby created, for the benefit of the security and advantage of the holders of the bonds of which the form is hereinbefore set forth, and of each and all of them; provided, however, and these presents are upon the express condition, that if the said Railroad Company shall duly make punctual payment of the interest warrants or coupons attached to said bonds at the time and in the manner expressed in said coupons, and shall punctually make payment of the principal money expressed in said bonds, according to the terms, conditions and tenor of said bonds, then and from thenceforth this mortgage, and the estate created thereby, is to cease, determine and be void; and the said party of the first part, the said The Mobile and Ohio Railroad Company, does hereby covenant, grant and agree to and with the said party of the fourth part, its successors and assigns, that in case either of default in the payment of the said bonds at the maturity thereof, or in case of default in payment of any of the coupons attached to any of said bonds, and in case of such default in the payment of coupons continuing for the space of six months, or in case the holder of any bond issued under said mortgage of 1853, or of any other claim entitled to the benefit of said decree of June 15, 1877, or to the benefit of either of the said decrees of

May 20, 1876, or November 12, 1877, and not assigned to said Hays, Du Puy and Pierson, or the survivors of them or their successors, shall insist upon and succeed in having either of said decrees enforced, or upon or in having said property or any part thereof sold or conveyed or exposed to sale, in or towards satisfaction of the claims established in and by such decrees, or either of them, or in case any of the property hereby mortgaged shall be seized or taken or exposed to sale under any execution or other legal process, then and in such contingency the said indebtedness so assigned to the said Hays, Pierson and Du Puy, or the survivors of them or their successors, and arising upon and secured by said mortgages and decrees, or either of them, so far as the same shall not have been previously satisfied, reduced or extinguished, and in case the same shall have been satisfied or extinguished then the indebtedness evidenced by said new bonds and coupons shall become and be capable of immediate enforcement, notwithstanding any period of time which shall meanwhile have elapsed, and notwithstanding the said agreements for compromise, extension and forbearance; and the said party of the first part will and doth hereby waive the benefit of any extension, stay or appraisement laws which now do or may hereafter exist; and in either of the cases last provided for it shall and may be lawful for the said party of the fourth part, its successors and assigns, to enter into and take possession of all and singular the lands, premises, rights, property, and franchises specified and described in or affected by said decrees, so far as said decrees shall not have been satisfied, cancelled, released or extinguished, and so far as the same shall have been satisfied, cancelled, released, or extinguished, then to enter upon and take possession of the property hereby mortgaged, and to hold the property so taken and entered upon for the benefit of the holders of the

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Enforcement of Decrees or Sale.

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Enforcement of Claims assigned to Committee of Reorganization.

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Authority to Trustees to take Possession.

bonds specified in said decrees, according to their respective rights and priorities as established by said decrees, so far as said decrees shall not have been released, satisfied, cancelled, or extinguished; and if such decrees shall have been released, cancelled, satisfied or extinguished, then for the benefit of the holders of the bonds secured hereby; and the said property and real estate so entered upon and taken possession of, and the tolls and income thereof, are to remain in the possession and under the control of the said party of the fourth part, its successors and assigns; and the said party of the fourth part, its successors and assigns, may directly and through the agency of such person or persons as it or they may appoint receive and collect the tolls, income and profits or the same, and may sell all of the said road remaining subject to the operation of any of said decrees and all property hereby mortgaged, conveyed and assigned, or intended so to be, and all property subject to the operation of any of said decrees so far as such decrees remain in force, and all benefit and equity of redemption of said Railroad Company, at public auction, giving reasonable public notice of the time and place of sale, and may in all respects execute the said decrees of June 15th, 1877, May 20th, 1876, and Nov. 12th, 1877, respectively, so far as the same may then remain in force, and may, so far as the said decrees shall not have been released, reduced, satisfied, extinguished or cancelled, apply without further notice to the said party of the first part, to the courts by which said decrees were rendered respectively, for processes and orders to enforce said decrees to the extent to which the same remain unsatisfied, and to that extent may in all respects avail itself of the benefit and advantage of said decrees, and appropriate the proceeds of such sale, whether made under either or all of said decrees

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Authority to Trustees to Manage.

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Authority to Trustees to Sell.

228

Disposition of Proceeds of Sale.

229 or under this mortgage, and the income, receipts and tolls of said property, to the payment of the bonds secured by the said decrees respectively, according to the order and priority specified in and described by said decrees, so far as such decrees may be in force, and otherwise to the payment of the bonds secured hereby. And, in so far as the said party of the fourth part, its successors or assigns, shall be holders of any of the bonds or securities specified in said decrees and assigned to
230 said Hays, Pierson and Du Puy or the survivors of them or their successors, and as such holders entitled to the proceeds of any sales made under said decrees or either of them, such proceeds, so far as received in money, shall be held and received by it for the benefit and security of the holders of said bonds now issued or intended to be issued, and of which the form is as above set forth, such proceeds to be distributed ratably and proportionately among the holders of said last-mentioned bonds according

231 Distribution of Proceeds of Sale if under Present Decrees, among Holders of New Securities.

to the amount of principal and interest then due or to become due and payable upon said bonds; and in case said assigned claims shall to any extent be used and made available in the purchase of the said property or any part thereof, under either or any of said decrees then the title so acquired shall be deemed to have been acquired subject to this mortgage and to said trust deed made simultaneously herewith, in like manner and with the same effect

Destination of Title, if Purchased by Trustees with Assigned Claims.

232 as if this mortgage and said trust deed and said new bonds and debentures had been made and given by the purchaser in payment of so much purchase money to the holders of said new bonds and debentures upon such purchase; and upon a sale being made under or by virtue of this mortgage or by virtue of said decrees or either of them, the said party of the fourth part and its successors and assigns are hereby authorized, as the attorney or attorneys of the said The Mobile and Ohio Railroad

Company, for that purpose by these presents duly 233
constituted, to make and deliver to the purchaser or
purchasers of said property a good and sufficient
deed or deeds of conveyance of the premises so con- Delivery of Deeds.
veyed, and proper transfers and assignments of the
said property to make and deliver, deducting first
out of the moneys received either from the income
or profits of said road or from the mortgaged pro-
perty herein described or from the sale thereof, the
expenses of carrying on the business of the road,
and keeping the same in repair, together with the 234
costs, charges and counsel fees incurred in the pro-
ceedings, and a reasonable compensation to the said
party of the fourth part for its services; and the
sale so made shall be a perpetual bar, both at law
and in equity, against the said party of the first
part and all persons claiming by, from or under
them. And the said The Mobile and Ohio Railroad
Company hereby covenants and agrees to and with
the said party of the fourth part, it successors
or assigns, that it will make, execute and deliver all 235
such further assurances or instruments as may be at
any time, or from time to time, hereafter necessary
for the further security of the holders of said bonds,
of which the form is hereinbefore set forth. And
the said party of the second part does hereby cove-
nant, promise and agree to and with the said parties
of the first, third and fourth parts, and each of
them, that when and so soon as he shall be duly au-
thorized so to do, he will deliver the property of the Surrender of Property by Receiver. 236
said Railroad Company in his keeping, custody
or charge, to the said Railroad Company, subject
to the liens, trusts and covenants herein expressed
and hereby created.

It is hereby mutually agreed that the holders of
a majority in amount of the outstanding bonds so
about to be issued as aforesaid, may by an instru-
ment or concurrent instruments in writing under the

hands and seals of themselves or their respective attorneys in fact thereto authorized, remove from the trusteeship hereunder any trustee other than the original Trustee herein named, whether such substituted Trustee shall have been appointed by a Court or in any other manner, and may by the same instrument or instruments, or separate instrument and concurrent instruments, appoint a Trustee in the place of the one so removed; and such majority in amount of such bondholders may by a concurrent instrument, executed in like manner, appoint a Trustee or Trustees to fill a vacancy which may have been created or may at any time exist, and any appointment of such new Trustee or Trustees made by the holders of the majority in amount of such outstanding bonds, in the manner aforesaid in either of the cases aforesaid, shall be valid and effectual; and such Trustee shall be vested with the like interests, estates, trusts and powers, and be subject to the like duties and obligations hereby given, granted and assumed, to and by the said party of the fourth part.

Authority to Remove Substituted Trustee or Fill Vacancy.

And it is further mutually agreed that in case any of the property, whether real or personal, to which this mortgage attaches, or is intended to attach, shall at any time cease to be available or useful in the operation of the said railroad, or in the carrying on of the business of said Railroad Company, or shall become more valuable for the purpose of being disposed of by sale than for the purpose of being retained in use or operation, or as a part of the capital and resources or the said party of the first part, and the said party of the first part shall be able to find a purchaser or purchasers therefor at its fair value, then said party of the fourth part may, in its discretion, unite with the said party of the first part in such sale and conveyance of such property, free from the lien, operation and effect of this mortgage, upon such terms and conditions as

Authority to Release from Lien.

to the receipt, appropriation, disbursemene and ex- 241
penditure of the proceeds of such sale and con-
veyance as said party of tho fourth part may,
in its discretion and acting in the interest
and for the security of said bondholders,
deem advisable and consent to; and it hav-
ing been already above provided by the terms
of this mortgage that any future acquired property
of said party of the first part shall be acquired and
be subject to the lien, operation and effect of this
mortgage, it is further specially declared that the Extension of Lien. 242
intent of the last foregoing covenant is to extend the
lien, operation and effect of this mortgage, to any
and all real estate and personal property which may
be from time to time hereafter acquired by said
party of the first part, in lieu of or in substitution
for any property which shall be released as aforesaid
from the lien, operation and effect of this mortgage,
and also to subject to the lien, operation and
effect of this mortgage, the proceeds of any property
which may be sold or released as aforesaid, and any 243
property which may be purchased or acquired with
the proceeds of the sale of any such property so sold
and released. But, notwithstanding anything
hereinbefore contained, it is understood and agreed
that in case the said railroad company shall acquire
property not now owned by it, for the purpose of
extending its present road, or building a branch
road or connecting road, it may, for the purpose of
obtaining means to acquire such extension, branch
or connection, and to put such extension branch or 244
connection in operating condition, and of equipping
the same for use and business, mortgage such
branch, extension or connection, with its equipment
and appurtenances, and such mortgage so made
may be prior to the lien of this mortgage.

It is also hereby further mutually agreed that in
the discharge of the duties imposed by this inden- Limitation of Liability.

245 ture, said party of the fourth part and its successors shall not be charged with liability by reason of any acts done or omitted in good faith in the exercise of reasonable diligence, judgment and discretion.

In witness whereof, the said parties of the first and fourth parts have hereunto set their respective corporate seals, and caused these presents to be attested by their respective officers thereunto duly authorized, and the said parties of the second and 246 third parts have hereunto set their hands and seals the day and year first above written.

Attestation.

THE MOBILE AND OHIO RAILROAD
[SEAL.] COMPANY, by
(Sgd.) A. L. RIVES,
*Vice-President.*
(Sgd.) A. L. WILLOUGHBY,
*Secretary*
(Sgd.) W. BUTLER DUNCAN, [L. S.]
247 *Surviving Receiver.*
(Sgd.) W. H. HAYS. [L S.]
(Sgd.) T. HASKINS DUPUY. [L. S.]
THE FARMERS' LOAN AND TRUST
[SEAL.] COMPANY,
(Sgd.) by R. G. ROLSTON,
*President.*
Attest: GEO. P. FITCH.
*Secretary.*

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STATE OF NEW YORK } ss:
*City and County of New York.* }

I. CHARLES NETTLETON, Commissioner of Deeds, of each of the States of Alabama and Mississippi, in New York, residing in said City of New York, do certify that William H. Hays and T. Haskins Du Puy, and also William Butler Duncan, Receiver, &c., whose name are respectively signed to the foregoing instrument, and who are each known to me, personally appeared before me and acknowledged before me on this day that, being informed of the contents of said instrument, they respectively executed the same voluntarily on the day the same bears date, and that they had signed, sealed and delivered the foregoing instrument on the day and year therein named as their voluntary act and deed, each respectively.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 22d day of May, 1879.

[SEAL.] (Sgd.) CHARLES NETTLETON,
*Commissioner for Alabama in New York,*
117 Broadway, New York City.
(Sgd.) CHARLES NETTLETON, [SEAL.]
*Commissioner for Mississippi in New York.*

STATE OF NEW YORK, } ss.:
*City and County of New York,* }

I, CHARLES NETTLETON, a Commissioner of each of the States of Kentucky and Tennessee for New York, residing in said City of New York, do certify that the foregoing instrument from the Mobile & Ohio Railroad Company to the Farmers' Loan & Trust Company, by and with the consent of William H. Hays and T. Haskins Du Puy, and by and with the consent of William Butler Duncan, Receiver, &c., was this day produced to me by the said Wil-

253 liam H. Hays, T. Haskins Du Puy and William Butler Duncan, Receiver, and acknowledged by the said William H. Hays, T. Haskins Du Puy and William Butler Duncan, Receiver, respectively, with whom I am personally acquainted, to be their act and deed, and they each acknowledged that they respectively executed the same for the uses and purposes therein contained.

In witness whereof, I have hereunto set
254 [L. S.] my hand and affixed my official seal, this 22d day of May, 1879.

[SEAL.] (sgd.) CHARLES NETTLETON,
*Commissioner for Kentucky in New York.*
117 Broadway, N. Y.
[SEAL.] (sgd.) CHARLES NETTLETON,
*Commissioner for Tennessee in New York.*

*State, City and County of New York*, ss.:

255 Be it remembered, that on this 22d day of May, A. D. 1879, before me, Charles Nettleton, a Commissioner of Deeds of each of the States of Alabama and Mississippi for the State of New York, residing in said City of New York, personally appeared Rosewell G. Rolston, the President of The Farmers' Loan and Trust Company, to me personally known to be such, who being by me duly sworn did depose and say that he resided in the City and State of New York; that he was the President of the said
256 Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order as the President of said The Farmers' Loan and Trust Company. And the said Rosewell G. Rolston, being personally known to me

to be the individual within described, acknowledged 257
to me that he had executed the foregoing instrument as the free act and deed of the said Farmers' Loan and Trust Company, freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal this 22d day of May, A. D. 1879.

[SEAL.] (sgd) CHARLES NETTLETON, 258
*Commissioner for Alabama in New York.*
117 Broadway, N. Y. City.

[SEAL.] (sgd) CHARLES NETTLETON,
*Commissioner for Mississippi in New York.*

*State, City and County of New York*, ss.:

Be it remembered, that on this 22d day of May, A. D. 1879, before me, Charles Nettleton, a Commissioner of Deeds of each of the States of Ken- 259
tucky and Tennessee for the State of New York, residing in said City of New York, personally appeared Rosewell G. Rolston, the President of the Farmers' Loan and Trust Company, to me personally known to be such, who being by me duly sworn did depose and say that he resided in the City and State of New York; that he was the President of the said Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; 260
that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order as the President of said The Farmers' Loan and Trust Company. And the said Rosewell G. Rolston, the President aforementioned, with whom I am personally acquainted, acknowledged to me that he had exe-

261 cuted the foregoing instrument as the act and deed of said The Farmers' Loan and Trust Company, for the purposes therein contained.

In witness whereof, I have hereunto set my hand and affixed my official seal this 22d day of May, A. D. 1879.

[SEAL.] (sgd) CHARLES NETTLETON,
*Commissioner for Kentucky in New York,*
262 117 Broadway, N. Y. City.

[SEAL.] (sgd) CHARLES NETTLETON,
*Commissioner for Tennessee in New York.*

THE STATE OF ALABAMA, }
*County of Mobile.* }

Be it remembered, that on this 7th day of June, A. D. 1879, before me, Samuel C. Muldon, a Notary Public, in and for the Port of Mobile and
263 County of Mobile and State of Alabama, residing in the Port of Mobile, and as Commissioner for the State of Mississippi to take the acknowledgments of deeds, &c., personally appeared A. L. Rives, Vice-President of the Mobile and Ohio Railroad Company, to me personally known to be such, who being by me duly sworn did depose and say that he is the Vice President of the Mobile and Ohio Railroad Company; that he knows the corporate seal of said company; that the seal affixed to the fore-
264 going instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said company, and that he signed his name thereto by the like order as the Vice President of the said The Mobile and Ohio Railroad Company; and the said A. L. Rives, being personally known to me to be the individual described, acknowledged to me that he had executed the foregoing instru-

ment as the free act and deed of the said The Mobile 265
and Ohio Railroad Company, freely and voluntarily
for the uses and purposes therein mentioned.

In witness whereof, I hereunto set my hand as Notary Public for the port of Mobile and County of Mobile, State of Alabama, and set my hand and official seal as Commissioner for the State of Mississippi, this 7th day of June, A. D. 1879. 266

[SEAL.] (sgd) SAML. C. MULDON,
*Notary Public,*
Mobile Co.

[SEAL.] (sgd) SAML. C. MULDON,
*A Commissioner for Mississippi in Alabama.*

THE STATE OF ALABAMA, }
*Mobile County.* }

Be it remembered, that on this 7th day of June, 267
A. D. 1879, before me, Saml. C. Muldon, Commissioner of Deeds of each of the States of Tennessee and Kentucky residing in the Port of Mobile, personally appeared A. L. Rives, Vice-President of the Mobile and Ohio Railroad Company, to me personally known to be such, who being by me duly sworn, did depose and say that he resides in the Port of Mobile; that he is the Vice-President of the said company; that he knows the corporate seal of said company; that the seal affixed to the 268
foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said company, and that he signed his name thereto by the like order as the Vice-President of the said The Mobile and Ohio Railroad Company. And the said A. L. Rives before mentioned, with whom I am personally acquainted,

269 acknowledged to me that he had executed the foregoing instrument as the free act and deed of the said The Mobile and Ohio Railroad Company, freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, I hereunto set my hand and affix my official seals this the 7th day of June, A. D. 1879.

270 [SEAL.] (sgd) SAML. C. MULDON,
*A Commissioner for Tennessee in Alabama.*

[SEAL.] (sgd) SAML. C. MULDON,
*A Commissioner for Kentucky in Alabama.*

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## PREFERRED INCOME AND SINKING FUND DEBENTURE.

TRUST DEED.

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*Dated May* 1, 1879.

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THE FARMERS' LOAN AND TRUST CO., TRUSTEES.

Date. *This Indenture*, made this first day of May, 1879, by and between the Mobile and Ohio Railroad Company, a body politic and corporate, duly created and existing under and by virtue of the laws of the

States of Alabama, Mississippi, Tennessee and Kentucky, party of the first part, and William Butler Duncan, as surviving Receiver of the property of said company, duly appointed by and acting under the authority of the Circuit Court of the United States for the Southern District of Alabama, and of the Circuit Court of the United States for the Western District of Tennessee, and of other Courts of the United States, party of the second part, William H. Hays and T. Haskins Du Puy (survivors of William S. Pierson, deceased), as the agents, assignees and attorneys of creditors of said corporation, and as a "Committee of Reorganization" under the agreement and transfer of October 1st, 1876, hereinafter mentioned, parties of the third part, and The Farmers' Loan and Trust Company, a body politic and corporate, duly created and existing under and by virtue of the laws of State of New York, and authorized to execute the trusts hereby created and herein expressed, party of the fourth part.

Whereas, the said The Mobile and Ohio Railroad Company was, by an Act of the Legislature of the State of Alabama, approved the third day of February, 1848, created a body politic and corporate, and by that name was, among other things, vested with all the powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of said Act; and

Whereas, said Act was amended by an Act passed by the Legislature of the State of Alabama on the 5th day of January, 1850; and

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Mississippi, approved February 17th, 1848, which Act was amended on the 4th of March, 1850, granted within the State of Mississippi the same rights, powers and

277 privileges as had been and are granted within the State of Alabama by the Legislature of the State of Alabama to the said Railroad Company, with certain exemptions which appear in said Act of the Legislature of the State of Mississippi, and the amendment thereto; and

Tennessee Incorporation.

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Tennessee, approved February 28th, 1848, created a body politic and corporate within the State of Tennessee, with
278 the rights, powers, privileges and immunities in said Act specified; and

Kentucky Incorporation.

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Kentucky, approved February 26th, 1848, granted within the State of Kentucky all the privileges, rights and immunities granted and belonging to the said Railroad Company within the State of Alabama; and

First Mortgage, 1853.

Whereas, the said Railroad Company, on or about the first day of November, 1853, in and by a
279 certain indenture of mortgage or deed of trust duly executed by it under its corporate seal, bearing date on that day, granted and conveyed the property therein described to Morris Ketchum, John J. Palmer, and William R. Hallett, as trustees, for the purpose of securing the payment of an issue of bonds in said mortgage or deed of trust described; and

Whereas, a large number of the bonds in and by the said mortgage or deed of trust described and
280 secured, were afterwards issued by said Railroad Company and put in circulation, with coupons for interest payable semi-annually thereto attached; and

Second Mortgage, 1860.

Whereas the said Railroad Company, on or about the fifteenth day of February, 1860, by a certain indenture of mortgage or trust deed known as the second mortgage, bearing date on that day, duly exe-

cuted by said Company under its corporate seal, granted and conveyed the property therein described, to Robert A. Baker, George H. Young and Samuel Williams, as trustees, for the purpose of securing the payment of the particular issue of bonds therein described: and

Whereas, a large number of the bonds in said mortgage of 1860 described and provided for, were afterwards issued and put in circulation by said Railroad Company; and

Whereas, the said Railroad Company, on or about the first day of July, 1871, in and by a certain other indenture of mortgage or trust deed, bearing date on that day, granted and conveyed the property therein described (the same being situate within the limits of the State of Tennessee), to William Butler Duncan, Adrian Iselin and Richard T. Wilson, as trustees, for the purpose of recognizing and declaring the lien, and securing the payment of the issue of bonds in said mortgage or deed of trust of July 1st, 1871, mentioned; and

Whereas, said bond in said mortgage of July 1st, 1871, described and provided for were afterwards issued and put in circulation; and

Whereas, the said Railroad Company, on or about the first day of January, 1874, in and by a certain other indenture of mortgage or deed of trust, bearing date on that day, granted and conveyed the property therein described to William Butler Duncan and Samuel L. M. Barlow, as trustees, for the purpose of securing the payment of the several issues of bonds in said mortgage or deed of trust of January 1st, 1874, described; and

Whereas, W. Butler Duncan and A. Foster Elliott became duly substituted in the place and stead of Morris Ketchum, Jno. J. Palmer and W. R. Hallett, as trustees, of the mortgage first herein above described or referred to; and

285 Whereas, on or about the 8th day of May, 1875, the said W. Butler Duncan and A. Foster Elliott, as trustees under said mortgage of 1853, took possession of the mortgaged property therein described, and afterwards commenced suits in the Circuit Court of the United States for the Southern District of Alabama and in other courts for the foreclosure of said mortgage of 1853, and for the sale of the mortgaged property; and

First Foreclosure suit.

286 Whereas, on the 14th day of March, 1876, another suit was brought in the said first-mentioned court by said Morris Ketchum, claiming to be trustee under said first mortgage, to foreclose the same, and for the sale of the mortgaged property; and

Second Foreclosure Suit.

Whereas, on the 2d day of April, 1877, another suit was brought in the same court by D'Oreli Ziegler and others, claiming to be the holders of mortgage bonds issued under and secured by said mortgage of 1853, to foreclose said mortgage of 1853, and for the sale of the mortgaged property; and

Third Foreclosure Suit.

287 Whereas, said several actions were by an order of the said Circuit Court of the United States for the Southern District of Alabama, made on the 6th day of June, 1877, consolidated, and pursuant to said order of said actions, as so consolidated, proceeded to a decree which was rendered by said Circuit Court of the United States for the Southern District of Alabama on the 15th day of June, 1877, which said decree was afterwards on or about the 30th day of May, 1878, affirmed by the Supreme Court of the United States; and

Consolidation of Suits.

Decree in Consolidated Suits

288 Whereas, on or about the 27th day of May, 1875, a suit was brought by W. Butler Duncan, Adrian Iselin and Richard T. Wilson, in the Circuit Court of the United States for the Western District of Tennessee, for the purpose of enforcing the lien declared in and recognized by the said mortgage of 1871, and for the sale of the mortgaged property therein described; and

Foreclosure Suit under Tennessee Substituted Lien.

Whereas, said last-mentioned suit proceeded to final decrees, which were rendered by said Circuit Court of the United States for the Western District of Tennessee, on the 20th day of May, 1876, and on the 12th day of November, 1877; and

289 Decree in Tennessee Suits.

Whereas, nearly all the holders of the outstanding bonds secured by the said several mortgages or deeds of trust, and by the said decrees of the said Courts, as well as nearly all the holders of other evidences of debt issued by the said Railroad Company, and of other claims outstanding against said Railroad Company, did in and by and pursuant to an agreement and transfer, bearing date October 1st, 1876, assign and transfer their respective claims and demands, and deliver the possession thereof, to said William H. Hays, William S. Pierson and T. Haskins Du Puy, of whom the said Hayes and Du Puy are the survivors, to which agreement and transfer of October 1st, 1876, reference is hereby made, as if the same were herein recited; and

290 Claims assigned to Committee of Bondholders.

Whereas it was agreed between the said Hays, Pierson and Du Puy, and the said Railroad Company, that the said Railroad Company should issue and deliver to said Hays, Pierson and Du Puy, and their survivors or successors, new bonds and debentures, in which should be expressed the sums of principal money and interest which, upon the conditions and contingencies herein expressed, should be received and taken in full payment and discharge of the claims so as aforesaid assigned to said Hayes, Pierson and Du Puy, but which, in the meantime, before the happening of such contingencies, are to be considered as evidence of the sums payable by said Railroad Company, in order finally to obtain the full benefit of the agreements of compromise, extension and forbearance herein mentioned, and of the time at which, and the conditions upon which, such sums are to become payable; and

291

Issue of New Securities to Committee of Bondholders.

292

293 Whereas the said William H. Hayes, William S. Pierson and T. Haskins Du Puy, by virtue of the authority conferred upon them by said agreement and transfer of October 1st, 1876, agreed upon a compromise, extension and forbearance of the said claims so transferred to and held by them as aforesaid, and so have agreed to accept said new bonds and debentures upon the conditions herein expressed, the terms of which compromise, extension and forbearance are as follows, namely: (1) that so far as said Railroad Company shall pay or cause to be paid the principal sums expressed in the bonds or debentures provided for by said agreement of October 1st, 1876, or the interest accruing thereon, pursuant to the terms of said bonds and the coupons thereto attached, and pursuant to the terms of the said debentures, such payments shall, in any event, be applied in extinguishment and discharge of an equal amount of the said indebtedness as aforesaid assigned to said Hayes, Pierson and Du Puy; (2) that in case all lawful claims against said Railroad Company which have arisen prior to the date of this instrument, and which have not yet been assigned to said Hays, Pierson and Du Puy, shall be assigned and transferred to said Hays and Du Puy, or their successors, or to the said The Farmers' Loan and Trust Company, under and pursuant to said agreement of October 1st, 1876, or in any manner satisfied, cancelled or extinguished by said Railroad Company, or out of its property or income, or otherwise, then all the claims so assigned and transferred shall thenceforth be deemed to have been paid and satisfied by the new bonds and debentures herein mentioned, and such assigned claims shall be, then and in that case, for all purposes and intents, cancelled and extinguished, and the said Railroad Company released therefrom; (3) that the said Hays and Du Puy, and their successors, and The Farmers' Loan and Trust Company shall not

Agreement of Compromise, Extension & Forbearance.

294

When Existing Liens partially Satisfied.

295

296 When Existing Liens Finally Satisfied.

nor shall either of them enforce or put in execution against said Railroad Company either of the said decrees, nor any of said assigned claims, so long as payment of the interest and principal mentioned in said new bonds, coupons and debentures, respectively, shall be made as aforesaid, unless the property of said Railroad Company, or some portion thereof, shall be exposed for sale, attached, seized, sequestrated or taken for the purpose of being applied towards satisfying some claim secured by some one of said decrees and not assigned pursuant to said agreement of October 1st, 1876, or some claim against said Railroad Company which has not been so assigned or transferred, and which has arisen prior to the date of this instrument, but (4) that upon default in the payment of said last-mentioned interest or principal, or upon the property of said Railroad Company, or any part thereof, being exposed for sale, attached, seized, sequestrated or taken for the purpose of being applied towards satisfying any claim secured by any one of said decrees, and not assigned pursuant to said agreement of October 1st, 1876, or any claim against said Railroad Company which has not been so assigned or transferred, and which has arisen prior to the date of this instrument, then said Hays and Du Puy, and their successors and assigns, holders of said claims so assigned may enforce said assigned claims and said decrees (so far as the same remain unsatisfied) for the benefit of the holders of the said new bonds and debentures, as if such holders of said new bonds and debentures were still entitled respectively to the proceeds of said assigned claims to the same extent as when the same were respectively assigned, except so far as such claims shall have been in fact paid under the operation of said agreements; (5) that until said claims so assigned shall be satisfied in manner aforesaid and pursuant to the terms

301 aforesaid, the several and respective holders of the new bonds and debentures provided to be issued as aforesaid, shall be beneficially interested in said assigned claims and the proceeds thereof, and the amounts of money or property collectible or realizable thereon or purchaseable or purchased therewith, in the same proportions and according to the same order and priority in which they are, or may be, from time to time, interested in said new bonds and debentures; (6) that after satisfaction of the

Interest of New Securities in Existing Liens.

302 said new bonds so to be issued in case the same shall be satisfied by means of a sale, the remaining proceeds of said sale shall be appropriated to the use and benefit of the holders of said debentures, according to the order and priority of such debentures, as fixed by said agreement of Oct. 1, 1876; (7) that in case said decrees, or either of them, shall be enforced, and a sale shall be made of any of the property covered thereby, the said assigned claims shall and may, so far as they may remain unsatis-

Disposition of Proceeds of Sale.

303 fied, be used and appropriated according to the terms and provisions of said decrees respectively in the purchase of the property so brought to sale, and that thereupon the title so acquired by such use and appropriation of such assigned claims shall become and be subject to the lien of this mortgage and the bonds secured thereby, and also to the lien, operation, and effect of the deeds of trust made simultaneously herewith for the benefit of the holders of preferred income and sinking fund de-

Authority to use Existing Liens to Purchase.

304 bentures; and

Whereas, said debentures are to be in substantially the following form:

(*Form of Preferred Income and Sinking Fund Debentures.*)

This is to certify that is entitled to the sum of dollars out of the Sinking Fund created by the Mobile and

Ohio Railroad Company for the benefit of the holders of the several series of preferred income and sinking fund debentures issued by it, which sinking fund is created by and described in the deed of trust made by the said Railroad Company to the Farmers' Loan and Trust Company, bearing date the first day of May, 1879. The said sinking fund consists of the proceeds of the lands described in the said trust deed, and of the surplus income so far as directed by said deed of trust, which proceeds and surplus income are to be applied to the purchase of the said prrferred income and sinking fund debentures in the order of their priority and in the manner directed by the said deed of trust.

"This debenture is issued pursuant to the terms of certain agreements heretofore made by the said Railroad Company for the compromise, extension and forbearance of its former indebtedness, and it does not bear interest at any fixed annual rate; but whenever it shall be ascertained that the net earnings or income of any one year amount to one per cent. or a multiple of one per cent. upon the principal amount of debentures embraced in any one series of debentures, after providing for prior charges on the gross earnings, such net earnings or income for that year are to be applied, pursuant to the terms of said trust deed, to the payment of interest on such series of debentures, no one payment of interest to exceed seven per cent. on the principal amount of such debentures; and the board of directors of said Railroad Company, in whose election the debenture holders participate, as provided in said trust deed, are to determine the amount of such net earnings or income so applicable to the payment of interest.

"The registered holder of this debenture is entitled, at the meetings of the holders of said debentures to be held pursuant to the terms and provisions

of said trust deed, to cast one vote for each one hundred dollars of principal money herein expressed, upon the question of instructing the trustee named in said trust deed, and its successors, how to vote for directors of the Mobile and Ohio Railroad Company; and the holder of this debenture is also entitled to cast a like vote at all other meetings of said debenture holders called pursuant to the terms of the said trust deed, for any purpose for which said debenture holders may properly and lawfully be convened. This debenture is transferable only upon the books of the said The Mobile & Ohio Railroad Company at the City of New York, in person or by attorney, upon the surrender of this certificate, or upon a simultaneous endorsement hereon, and under such regulations as the board of directors of said Railroad Company may from time to time prescribe.

"In witness whereof, the said The Mobile and Ohio Railroad Company has hereunto set its corporate seal, and [L. S.] caused these presents to be attested by its officers thereunto duly authorized, this day of 18 .

*President.*

*Secretary.*

Countersigned and registered.

*Trustee.*"

New Securities Not Received in Present Payment.

And whereas it was agreed that the said debentures should be issued to said Hays and Du Puy, as survivors of said Pierson, and disposed of and appropriated by them, pursuant to the terms of

said agreement of October 1st, 1878, without, however, being received in present payment or extinguishment of the claims so assigned to said Hays, Pierson and Du Puy, in whole or in part, but being received by said Hays and Du Puy and disposed of under said agreement only as conditional payment and extinguishment of such claims, and to be final and full payment only upon the conditions above expressed; and it was also agreed by said Railroad Company with said Hays, Pierson and Du Puy that in case any of the property of the said Railroad Company shall be taken or seized in execution or by any creditor for the purpose of sale, or for the purpose of satisfying the claims of such creditor, or in case any person who has failed or omitted or refused to transfer or assign his claims to the said Hays, Pierson and Du Puy, or to the survivors of them or their successors, and who is entitled to the benefit of either of said decrees, shall insist upon and succeed in bringing to execution either of the said decrees; or in case that said Railroad Company shall make default in the payment of the interest on any of the said new bonds, and such interest shall remain in arrear and unpaid for the space of six months; or in case said Railroad Company shall make default in the payment of the principal of any of the said new bonds, then, in any or either of such cases, the said indebtedness, as well that secured by the mortgages and decrees hereinbefore recited as the other indebtedness and claims assigned to said Hays, Pierson and Du Puy, or the survivors of them or their successors, so far as the same shall not previously have been cancelled, satisfied, reduced or extinguished, may, upon an equal footing as to grade and priority of security with the holders of like or corresponding claims, not assigned to the said Hays, Pierson, and Du Puy, or the survivors of them, or their successors,

317 be immediately enforced in full for the benefit of the holders of the said new bonds and debentures, according to their order and priority as specified in said agreement of October 1, 1876; and

New Mortgage. Whereas, the said Railroad Company has also issued and delivered simultaneously herewith a mortgage to secure the payment of the said new bonds called for and specified in the said agreement of October 1st, 1876; and

Designation of Trustees. Whereas the said Wm. H. Hays and T. Haskins
318 Du Puy have, pursuant to the terms of the agreement of October 1st, 1876, designated the Farmers' Loan and Trust Company, of the City of New York, to be trustee in this trust deed:

Consideration. Now this indenture witnesseth that the said The Mobile and Ohio Railroad Company, in consideration of the premises, and of the sum of one dollar to it in hand paid by the said party of the fourth part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowl-
319 edged, and for the purpose of carrying into effect the said compromises and agreements, as well as for the purpose of securing the payment of the amounts of money expressed in or payable upon the said debentures, and by and with the consent of said parties of the second and third parts testified by their execution of these presents, Hath granted, bargained and sold, assigned, transferred, conveyed and set over, and by these presents Doth grant, bargain and sell, assign, transfer, convey and set
320 over, unto the said The Farmers' Loan and Trust Company, party of the fourth part to these presents, and its successors in the trusts hereby created, in fee simple, all lands granted to the said The Description. Mobile and Ohio Railroad Company by any State, or by the United States, not heretofore sold and disposed of by said Railroad Company, as well as all lands belonging to the said The Mobile and Ohio

Conveyance.

Railroad Company, and not necessary for the operation of the railroad of said company (not including any branch line now or heretofore owned by said Railroad Company), and also so much of the net income of said Railroad Company as shall remain after payment of current expenses, cost of maintenance, improvements, repairs and interest on the new first mortgage bonds of the said The Mobile & Ohio Railroad Company, bearing date the first day of May, 1879, and on the said debentures, as hereinafter more particularly specified. TO HAVE AND TO HOLD the same, and the appurtenances, to the said party of the fourth part to these presents, and its successors in the said trusts, to, for and upon the uses, trusts and purposes hereinafter declared of and concerning the same, that is to say: in trust for the purpose of securing the performance of the conditions of said agreement of October 1, 1876, and the performance of the covenants therein contained for the benefit and security of the holders of the said debentures, and for the purpose of securing the payment of such sums of money as are expressed in or shall become payable upon the said debentures. And it is hereby agreed that there shall be, and there is hereby created, pursuant to the terms of said agreement of October 1, 1876, a sinking fund for the benefit of the holders of the said debentures, that is to say, the said party of the fourth part and its successors in the said trusts are hereby authorized from time to time to sell and convey the lands and premises hereby granted and conveyed, and good and sufficient deeds therefor in fee simple to execute and deliver, and to receive the proceeds of such sales; and said party of the fourth part, and its successors in said trust, shall deposit the proceeds of the sales of said lands in the Bank of the State of New York, in the City of New York, or such other depository as the party of the fourth

325 part or its successors in said trust may select in the City of New York, each six months; and whenever and in case that the sums so deposited shall amount in the aggregate to ten thousand dollars or more, they shall advertise in the Cities of Mobile and New York, stating the amounts so deposited at the disposal of the sinking fund, and asking for tenders of the debentures of the first series herein mentioned then outstanding, awarding the amount so deposited to the holders of the debentures tendered at the 326 lowest prices. In default of any bids or tenders of such debentures, the trustees shall thereupon draw by lot a sufficient number of the debentures of the first series then outstanding to absorb such deposits, and shall apply the proceeds to the purchase of the debentures so drawn by lot, at par; and after purchase of such debentures of the first series, the proceeds of the sales of said lands, and the interest received on the debentures already purchased and received by said trustees, shall be applied in like man- 327 ner, and by the same means, to the purchase of each of the said series of debentures in succession. All debentures purchased by said party of the fourth part, and its successors in the said trusts under this instrument shall be transferred to the name of the trustee, and shall be stamped "*Not negotiable*," and shall not be reissued. And the said sinking fund is to consist of the proceeds of said lands, and of interest upon the debentures so purchased by said party of the fourth part, and its 328 successors in said trust, until all the debentures shall have been bought, satisfied or extinguished; and there shall also be paid into the said sinking fund by the said The Mobile and Ohio Railroad Company, a further amount equal to the amount of each dividend which may be hereafter declared upon the capital stock now existing or which may hereafter be created by said Railroad Company, which

Investment of Sinking Fund.

Composition of Sinking Fund.

dividend shall not be declared or paid except an amount equal thereto is also paid in at the same time out of the net revenue into the sinking fund.

And it is also agreed by the said The Mobile and Ohio Railroad Company that on the first day of each December following the date of this indenture, until said debenture shall be fully paid and satisfied, the said The Mobile and Ohio Railroad Company shall and will ascertain as closely as practicable the net earnings of such company remaining after paying the expenses of the administration of its affairs, the cost of maintenance, operation, management and proper repair to the property, all taxes and assessments, and the interest on the new first mortgage bonds of said Railroad Company (issued under and pursuant to said agreement of October 1st, 1876) up to the first day of July then next preceding, and such additions and improvements as may be deemed by the said Railroad Company necessary for the maintenance of its business; and in case there shall remain in cash any of such net earnings for the year ending on the first day of July then next preceding, and if it shall then be ascertained that up to the first day of July then next preceding that first day of December the said net earnings, after making provision for the expenses, interest and other outgoes aforesaid, as hereinabove provided, leave any sum applicable to the payment of interest on such debentures, then such net earnings shall be applied to the payment of interest on said first series of debentures, not exceeding seven per cent. in lawful money of the United States, and such application and payment shall be made on or before the first day of February in the next succeeding year; and after payment of interest at the rate of seven per cent. per annum on said debentures of the first series, what remains of the said net earnings shall be applied to the payment of interest on the said

333 To Second Debenture. debentures of the second series, at a rate not exceeding seven per cent. per annum; and, after the payment of interest at that rate on the said debentures of the second series, what remains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum

To Third Debenture. on the debentures of the third series; and what then remains of said net earnings shall be applied to the payment of interest, at a rate not exceeding seven per cent. per annum, on said debentures of the

334 fourth series; and in case the said net earnings for

To Fourth Debenture. any one year shall not be adequate to the payment of seven per cent. on all or either series of such debentures, then the deficiency shall not be a claim upon any earnings of any succeeding year, but shall be absolutely waived and relinquished, and the net earnings shall only be applicable to the payment of

Interest on Debentures non-cumulative. interest on either series of debentures in case such earnings shall amount to one per cent. or a multiple of one per cent. on the total amount of debentures

335 belonging to such series, so that fraction of earnings exceeding such one per cent. or multiple of one per cent. need not be included in the payment of interest for that year, but shall be carried to the credit of the earnings for the succeedinng year; and it is hereby expressly provided, declared and agreed, that the determination by the Board of Directors of said party of the first part of what constitutes net earnings and of what is the amount of net earnings

Method of Determining Net Earnings. distributable as hereinabove provided, shall be con-

336 clusive upon the holders of such debentures respectively.

And whereas the said Hays and Du Puy, as holders of a number of shares of the capital stock of the said Railroad Company, have, by an instrument

Power to Trustees to Vote on Stock. bearing even date herewith, made for the further security of the holders of said debentures, conveyed to and vested in the said party of the fourth part,

and its successors in the said trust, power and authority, irrevocable while any of said debentures remain outstanding, to represent and vote upon said shares of stock at all meetings of the stockholders of said Railroad Company for the election of directors, or for any other purpose for which said stockholders may be lawfully convened. 337

Now, therefore, it is hereby provided that it shall be the duty of the said party of the first part, and it hereby agrees, to keep regular Debenture Account-books, such as Debenture Transfer-books and Ledgers, showing at all times, and from time to time, who are the holders of said debentures; and said party of the first part shall call an annual meeting of the holders of said debentures in each year, at such convenient place in the city of New York as shall be designated by the said party of the first part, by at least three weeks' public notice to be published in one or more newspapers published in the city of New York; such notice to be published twice a week during the said period of three weeks, and the date designated for such meeting shall be not less than ten days preceding the annual meeting of the stockholders of said Railroad Company, and at such meetings each debenture holder shall be entitled to vote, in person or by proxy, for each one hundred dollars of principal money expressed in the debenture or debentures held by him. And the said party of the fourth part, and its successors, as holders of said power and authority, may prescribe reasonable regulations, conforming as nearly as may be to the regulations in force at the meetings of the stockholders of said Railroad Company, for the organization of said meetings, and for the preservation of order at such meetings, and for counting the votes cast at such meetings and determining the result thereof; and the said party of the fourth part, and its successors in the said trust, as holders of said

Covenants.

Debenture Transfer Book. 338

Annual Meeting of Debenture Holders.

339

Debentures Entitled to Vote.

340

Power to Regulate Meetings of Debenture Holders.

power and authority, may and shall vote, in person or by proxy, at stockholders' meetings of said Railroad Company, as instructed and directed by a majority of the votes cast at such annual meeting of said debenture holders; and for the purpose of identifying and registering the names of the debenture holders entitled to vote at said meetings, the transfer-books for such debentures may and shall be closed at the same time and for the same period at and for which the stock transfer-books of said Railroad Company shall be, pursuant to its by-laws, closed, so that no transfer of any of said debentures nor of any of said stock shall be permitted within a period of not less than twenty days next preceding any meeting of said stockholders.

Regulating Transfers of Debentures.

And it is further covenanted, declared, granted and agreed by the said The Mobile and Ohio Railroad Company that this trust deed, and the amount of principal and interest payable upon said debentures, shall and do constitute and create a lien upon the property of said Railroad Company, mortgaged by said new mortgage, subject to the lien of the decrees above recited, and subject to the new mortgage now simultaneously executed by said Railroad Company, to such an extent that in case of a foreclosure of said new mortgage and a sale thereunder, or in case of a sale of any part of the property of said Railroad Company under any incumbrance having priority to this trust deed, the said party of the fourth part, and its successors in said trust, for the benefit of said debentures, according to their order and priority, shall be entitled to the surplus cash proceeds of such sale next after payment of the amount due on such prior incumbrances, to the amount of the aggregate principal sum due on such debentures, and so that in case any lien (other than for the purchase-money or equipment of property hereafter acquired) upon any of the prop-

Description of Lien.

Disposition of Proceeds in Case of Sale.

erty of said Railroad Company, or any part thereof, 345
shall arise, subsequent to the making of this trust deed, by the act or sufferance of said Railroad Company, and such subsequent lien shall be enforced to the extent of depriving said Railroad Company of the possession of any such property or any part thereof, then the said party of the fourth part and its successors in the said trust may enter into Authority to take Possession and Sell.
possession of such part of said property and sell the same, clear of all subsequent liens, for the benefit of holders of said debentures according to their 346
order and priority, or may exact redemption and payment in full of the principal amount of such debentures, before surrendering such property to subsequent lienors; and the said party of the second part does hereby covenant, promise and agree, to and with the parties of the first, third and fourth parts, and each of them, that when and so soon as he shall be duly authorized so to do, he will deliver the property of the said Railroad Company in his keeping, custody or charge as far as herein- Agreement to Surrender Possession. 347
before described and conveyed, to the said party of the fourth part, subject to the liens, trusts and covenants herein expressed and hereby created. And the said party of the fourth part, at the request of the said party of the first part, may, by instruments in writing executed under its corporate seal, and duly attested, from time to time designate two suitable persons to act as attorneys for the said party of the fourth part, in its name, or lawfully otherwise, for the purpose of executing and de- 348
livering such deeds of conveyance, releases and other muniments of title as it shall from time to time be necessary to execute and deliver in order to dispose of any of said lands or for the purpose of perfecting title thereto, and such appointment or Power to Sell Lands.
appointments may also be from time to time revoked by the said party of the fourth part to these

349 presents, and its succesors in the said trust, in its and their discretion, and the said party of the fourth part may also employ such agents and servants as shall be necessary to the efficient performance and discharge of the duties and trusts herein expressed and hereby created, and shall be entitled to indemnity out of the said sinking fund for all expenses necessarily incurred by it in the execution of its said trust and in the discharge of the said duties.

350 And it is also further mutually agreed that in the discharge of the said duties imposed by this trust deed the said party of the fourth part and its successors shall not be charged with any liability by reason of any act done in good faith in the exercise of reasonable diligence, judgment and discretion.

Limitation of Liability.

Attestation.

In witness whereof, the said parties of the first and fourth parts have hereunto set their respective corporate seals and caused these presents to be 351 attested by their respec.ive officers thereunto duly authorized, and the said parties of the second and third parts have hereunto set their hands and seal the day and year first above written.

THE MOBILE AND OHIO RAILROAD COMPANY, by

[SEAL.] (Sgd.) A. L. RIVES,
*Vice-President.*

Attest: (Sgd.) A. L. WILLOUGHBY,
*Secretary.*

352 (Sgd.) W. BUTLER DUNCAN, [L. S.]
*Surviving Trustee.*

(Sgd.) W. H. HAYS. [L S.]

(Sgd.) T. HASKINS DUPUY. [L. S.]

THE FARMERS' LOAN AND TRUST

[SEAL.] COMPANY,

(Sgd.) by R. G. ROLSTON,
*President.*

Attest: GEO. P. FITCH.
*Secretary.*

STATE OF NEW YORK
*City and County of New York,* } ss.: 353

I, CHARLES NETTLETON, Commissioner of Deeds, of each of the States of Alabama and Mississippi, in New York, residing in said City of New York, do certify that William H. Hays and T. Haskins Du Puy, and also William Butler Duncan, Receiver, &c., whose names are respectively signed to the foregoing instrument, and who are each known to me, personally appeared before me and acknowledged before me on this day that, being informed of the 354
contents of said instrument, they respectively executed the same voluntarily on the day the same bears date, and that they had signed, sealed and delivered the foregoing instrument on the day and year therein named as their voluntary act and deed, each respectively.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 22d day of May, 1879. 355

[SEAL.] (Sgd.) CHARLES NETTLETON,
*Commissioner for Alabama in New York,*
117 Broadway, New York City.
(Sgd.) CHARLES NETTLETON. [SEAL.]
*Commissioner for Mississippi in New York.*

STATE OF NEW YORK,
*City and County of New York,* } ss.:

I, CHARLES NETTLETON, a Commissioner of each of the States of Kentucky and Tennessee for New 356
York, residing in said City of New York, do certify that the foregoing instrument from the Mobile & Ohio Railroad Company to the Farmers' Loan & Trust Company, by and with the consent of William H. Hays and T. Haskins Du Puy, and by and with the consent of William Butler Duncan, Receiver, &c., was this day produced to me by the said Wil-

liam H. Hays, T. Haskins Du Puy and William Butler Duncan, Receiver, and acknowledged by the said William H. Hays, T. Haskins Du Puy and William Butler Duncan, Receiver, respectively, with whom I am personally acquainted, to be their act and deed, and they each acknowledged that they respectively executed the same for the uses and purposes therein contained.

In witness whereof, I have hereunto set
[L. s.] my hand and affixed my official seal, this 22d day of May, 1879.

[SEAL.] (sgd.) CHARLES NETTLETON,
*Commissioner for Kentucky in New York.*
117 Broadway, N. Y.

[SEAL.] (sgd.) CHARLES NETTLETON,
*Commissioner for Tennessee in New York.*

*State, City and County of New York*, ss.:

Be it remembered, that on this 22d day of May, A. D. 1879, before me, Charles Nettleton, a Commissioner of Deeds of each of the States of Alabama and Mississippi for the State of New York, residing in said City of New York, personally appeared Rosewell G. Rolston, the President of The Farmers' Loan and Trust Company, to me personally known to be such, who being by me duly sworn did depose and say that he resided in the City and State of New York; that he was the President of the said Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order as the President of said The Farmers' Loan and Trust Company. And the said Rosewell G. Rolston, being personally known to me

to be the individual within described, acknowledged 361
to me that he had executed the foregoing instrument as the free act and deed of the said Farmers' Loan and Trust Company, freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal this 22d day of May, A. D. 1879.

[SEAL.] (sgd) CHARLES NETTLETON, 362
*Commissioner for Alabama in New York.*
117 Broadway, N. Y. City.

[SEAL.] (sgd) CHARLES NETTLETON,
*Commissioner for Mississippi in New York.*

*State, City and County of New York*, ss.:

Be it remembered, that on this 22d day of May, A. D. 1879, before me, Charles Nettleton, a Commissioner of Deeds of each of the States of Kentucky and Tennessee for the State of New York, residing in said City of New York, personally appeared Rosewell G. Rolston, the President of the Farmers' Loan and Trust Company, to me personally known to be such, who being by me duly sworn did depose and say that he resided in the City and State of New York; that he was the President of the said Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; 364
that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order as the President of said The Farmers' Loan and Trust Company. And the said Rosewell G. Rolston, the President aforementioned, with whom I am personally acquainted, acknowledged to me that he had exe-

365 cuted the foregoing instrument as the act and deed of said The Farmers' Loan and Trust Company, for the purposes therein contained.

In witness whereof, I have hereunto set my hand and affixed my official seal this 22d day of May, A. D. 1879.

[SEAL.] (sgd) CHARLES NETTLETON,
117 Broadway, N. Y. City.

366 *Commissioner for Kentucky in New York.*

[SEAL.] (sgd) CHARLES NETTLETON,
*Commissioner for Tennessee in New York.*

STATE OF ALABAMA, }
*County of Mobile.* }

Be it remembered, that on this 7th day of June, A. D. 1879, before me, Samuel C. Muldon, a Notary Public, in and for the Port of Mobile and
367 County of Mobile and State of Alabama, residing in the Port of Mobile, and as Commissioner for the State of Mississippi to take the acknowledgments of deeds, &c., personally appeared A. L. Rives, Vice-President of the Mobile and Ohio Railroad Company, to me personally known to be such, who being by me duly sworn did depose and say that he resides in the Port of Mobile; that he is the Vice President of the Mobile and Ohio Railroad Company; that he knows the corporate seal
368 of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said company, and that he signed his name thereto by the like order as the Vice President of the said The Mobile and Ohio Railroad Company; and the said A. L. Rives, being personally known to me to be the individual described, acknowledged

to me that he had executed the foregoing instru- 369
ment as the free act and deed of the said The Mobile and Ohio Railroad Company, freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I hereunto set my hand as Notary Public in and for the County of Mobile, State of Alabama, and set my hand and official seal as Commissioner for the State of Mississippi, 380
this 7th day of June, A. D. 1879.

[SEAL.] (sgd) SAML. C. MULDON,
*Notary Public,*
Mobile Co.

[SEAL.] (sgd) SAML. C. MULDON,
*A Commissioner for Mississippi in Alabama.*

STATE OF ALABAMA, }
*Mobile County.* } 371

Be it remembered, that on this 7th day of June, A. D. 1879, before me, Saml. C. Muldon, Commissioner of Deeds of each of the States of Tennessee and Kentucky residing in the Port of Mobile, personally appeared A. L. Rives, Vice-President of the Mobile and Ohio Railroad Company, to me personally known to be such, who being by me duly sworn, did depose and say that he resides in the Port of Mobile: that he is the Vice-President of the said company; that he knows the corporate 372
seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said company, and that he signed his name thereto by the like order as the Vice President of the said The Mobile and Ohio Railroad Company. And the said A. L. Rives before men-

373 tioned, with whom I am personally acquainted acknowledged to me that he had executed the foregoing instrument as the free act and deed of the said The Mobile and Ohio Railroad Company, freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, I hereunto set my hand and affix my official seals this the 7th day of June, A. D. 1879.

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[SEAL.] (sgd) SAML. C. MULDON,
*A Commissioner for Tennessee in Alabama.*

[SEAL.] (sgd) SAML. C. MULDON,
*A Commissioner for Kentucky in Alabama.*

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# ASSIGNMENT OF SECURITIES

BY THE

# COMMITTEE OF REORGANIZATION

TO THE

# FARMERS' LOAN & TRUST CO., TRUSTEES.

Dated March 1, 1879.

THIS INDENTURE, Made this first day of May, 1879, by and between William H. Hays and T. Haskins Du Puy (survivors of William S. Pierson, deceased) as the agent, assignees and attorneys of creditors of The Mobile and Ohio Railroad Company, and as a "Committee of Reorganization," under the agreement and transfer of October 1st, 1876, hereinafter mentioned, parties of the first part, The Mobile and Ohio Railroad Company, a body politic and corporate, duly created and existing under and by virtue of the laws of the States of Alabama, Mississippi, Tennessee and Kentucky, party of the second part, and the Farmers' Loan and Trust Company, a body politic and corporate, duly created and existing under and by virtue of the laws of the State of New York, and authorized to execute the trusts hereby created and herein expressed, party of the third part.

Whereas, the said The Mobile and Ohio Railroad Company was, by an Act of the Legislature of the State of Alabama, approved the third day of February, 1848, created a body politic and corporate, and by that name was, among other things, vested with all the powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of said Act; and

Whereas, said Act was amended by an Act passed

by the Legislature of the State of Alabama on the 5th day of January, 1850; and

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Mississippi, approved February 17th, 1848, which Act was amended on the 4th of March, 1850, granted within the State of Mississippi the same rights, powers and privileges as had been and are granted within the State of Alabama by the Legislature of the State of Alabama to the said Railroad Company, with certain exemptions which appear in said Act of the Legislature of the State of Mississippi, and the amendments thereto; and

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Tennessee, approved February 28th, 1848, created a body politic and corporate within the State of Tennessee, with the rights, powers, privileges and immunities in said Act specified; and

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Kentucky, approved February 26th, 1848, granted within the State of Kentucky all the privileges, rights and immunities granted and belonging to the said Railroad Company within the State of Alabama; and

Whereas, the said Railroad Company, on or about the first day of November, 1853, in and by a certain indenture of mortgage or deed of trust duly executed by it under its corporate seal, bearing date on that day, granted and conveyed the property therein described to Morris Ketchum, John J. Palmer, and William R. Hallett, as trustees, for the purpose of securing the payment of an issue of bonds in said mortgage or deed of trust described; and

Whereas, a large number of the bonds in and by the said mortgage or deed of trust described and secured, were afterwards issued by said Railroad

Company and put in circulation, with coupons for 385
interest payable semi-annually thereto attached;
and

Whereas the said Railroad Company, on or about the fifteenth day of February, 1860, by a certain indenture of mortgage or trust deed known as the second mortgage, bearing date on that day, duly executed by said Company under its corporate seal, granted and conveyed the property therein described, to Robert A. Baker, George H. Young and Samuel Williams, as trustees, for the purpose of 386
securing the payment of the particular issue of bonds therein described: and

Whereas, a large number of the bonds in said mortgage of 1860 described and provided for, were afterwards issued and put in circulation by said Railroad Company; and

Whereas, the said Railroad Company, on or about the first day of July, 1871, in and by a certain other indenture of mortgage or trust deed, bearing date on that day, granted and conveyed the property 387
therein described (the same being situate within the limits of the State of Tennessee), to William Butler Duncan, Adrian Iselin and Richard T. Wilson, as trustees, for the purpose of recognizing and declaring the lien, and securing the payment of the issue of bonds in said mortgage or deed of trust of July 1st, 1871, mentioned; and

Whereas, said bond in said mortgage of July 1st, 1871, described and provided for were afterwards issued and put in circulation; and 388

Whereas, the said Railroad Company, on or about the first day of January, 1874, in and by a certain other indenture of mortgage or deed of trust, bearing date on that day, granted and conveyed the property therein described to William Butler Duncan and Samuel L. M. Barlow, as trustees, for the purpose of securing the payment of the several issues

of bonds in said mortgage or deed of trust of January 1st, 1874, described; and

Whereas, W. Butler Duncan and A. Foster Elliott became duly substituted in the place and stead of Morris Ketchum, Jno. J. Palmer and W. R. Hallett, as trustees, of the mortgage first herein above described or referred to; and

Whereas, on or about the 8th day of May, 1875, the said W. Butler Duncan and A. Foster Elliott, as trustees under said mortgage of 1853, took possession of the mortgaged property therein described, and afterwards commenced suits in the Circuit Court of the United States for the Southern District of Alabama and in other courts for the foreclosure of said mortgage of 1853, and for the sale of the mortgaged property; and

Whereas, on the 14th day of March, 1876, another suit was brought in the said first-mentioned court by said Morris Ketchum, claiming to be trustee under said first mortgage, to foreclose the same, and for the sale of the mortgaged property; and

Whereas, on the 2d day of April, 1877, another suit was brought in the same court by D'Oreli Ziegler and others, claiming to be the holders of mortgage bonds issued under and secured by said mortgage of 1853, to foreclose said mortgage of 1853, and for the sale of the mortgaged property; and

Whereas, said several suits were by an order of the said Circuit Court of the United States for the Southern District of Alabama, made on the 6th day of June, 1877, consolidated, and pursuant to said order the said suits, as so consolidated, proceeded to a decree which was rendered by said Circuit Court of the United States for the Southern District of Alabama on the 15th day of June, 1877, which said decree was afterwards on or about the 30th day of May, 1878, affirmed by the Supreme Court of the United States; and

Whereas, on or about the 27th day of May, 393
1875, a suit was brought by W. Butler Duncan, Adrian Iselin and Richard T. Wilson, in the Circuit Court of the United States for the Western District of Tennessee, for the purpose of enforcing the lien declared in and recognized by the said mortgage of 1871, and for the sale of the mortgaged property therein described; and

Whereas, said last-mentioned suit proceeded to final decrees, which were rendered by said Circuit Court of the United States for the Western District 394
of Tennessee, on the 20th day of May, 1876, and on the 12th day of November, 1877; and

Whereas, nearly all the holders of the outstanding bonds secured by the said several mortgages or deeds of trust, and by the said decrees of the said Courts, as well as nearly all the holders of other evidences of debt issued by the said Railroad Company, and of other claims outstanding against said Railroad Company, did in and by and pursuant to an agreement and transfer, bearing date October 1st, 395
1876, assign and transfer their respective claims and demands, and deliver the possession thereof, to said William H. Hays, William S. Pierson and T. Haskins Du Puy, of whom the said Hayes and Du Puy are the survivors, to which agreement and transfer of October 1st, 1876, reference is hereby made, as if the same were herein recited; and

Whereas it was agreed between the said Hays, Pierson and Du Puy, and the said Railroad Company, that the said Railroad Company should issue 396
and deliver to said Hays, Pierson and Du Puy, and their survivors or successors, new bonds and debentures, in which should be expressed the sums of principal money and interest which, upon the conditions and contingencies herein expressed, should be received and taken in full payment and discharge of the claims so as aforesaid assigned to

said Hayes, Pierson and Du Puy, but which, in the meantime, before the happening of such contingencies, are to be considered as evidence of the sums payable by said Railroad Company, in order finally to obtain the full benefit of the agreements of compromise, extension and forbearance herein mentioned, and of the time at which, and the conditions upon which, such sums are to become payable; and

Whereas the said William H. Hayes, William S. Pierson and T. Haskins Du Puy, by virtue of the authority conferred upon them by said agreement and transfer of October 1st, 1876, agreed upon a compromise, extension and forbearance of the said claims so transferred to and held by them as aforesaid, and so have agreed to accept said new bonds and debentures upon the conditions herein expressed, the terms of which compromise, extension and forbearance are as follows, namely: (1) that so far as said Railroad Company shall pay or cause to be paid the principal sums expressed in the bonds or debentures provided for by said agreement of October 1st, 1876, or the interest accruing thereon, pursuant to the terms of said bonds and the coupons thereto attached, and pursuant to the terms of the said debentures, such payments shall, in any event, be applied in extinguishment and discharge of an equal amount of the said indebtedness as aforesaid assigned to said Hayes, Pierson and Du Puy; (2) that in case all lawful claims against said Railroad Company which have arisen prior to the date of this instrument, and which have not yet been assigned to said Hays, Pierson and Du Puy, shall be assigned and transferred to said Hays and Du Puy, or their successors, or to the said The Farmers' Loan and Trust Company, under and pursuant to said agreement of October 1st, 1876, or in any manner satisfied, cancelled or extinguished by said Railroad Company, or out of its property or income, or

otherwise, then all the claims so assigned and transferred shall thenceforth be deemed to have been paid and satisfied by the new bonds and debentures herein mentioned, and such assigned claims shall be, then and in that case, for all purposes and intents, cancelled and extinguished, and the said Railroad Company released therefrom; (3) that the said Hays and Du Puy, and their successors, and The Farmers' Loan and Trust Company shall not nor shall either of them enforce or put in execution against said Railroad Company either of the said decrees, nor any of said assigned claims, so long as payment of the interest and principal mentioned in said new bonds, coupons and debentures, respectively, shall be made as aforesaid, unless the property of said Railroad Company, or some portion thereof, shall be exposed for sale, attached, seized, sequestrated or taken for the purpose of being applied towards satisfying some claim secured by some one of said decrees and not assigned pursuant to said agreement of October 1st, 1876, or some claim against said Railroad Company which has not been so assigned or transferred, and which has arisen prior to the date of this instrument, but (4) that upon default in the payment of said last-mentioned interest or principal, or upon the property of said Railroad Company, or any part thereof, being exposed for sale, attached, seized, sequestrated or taken for the purpose of being applied towards satisfying any claim secured by any one of said decrees, and not assigned pursuant to said agreement of October 1st, 1876, or any claim against said Railroad Company which has not been so assigned or transferred, and which has arisen prior to the date of this instrument, then said Hays and Du Puy, and their successors and assigns, holders of said claims so assigned may enforce said assigned claims and said decrees (so far as the same remain unsatisfied) for

the benefit of the holders of the said new bonds and debentures, as if such holders of said new bonds and debentures were still entitled respectively to the proceeds of said assigned claims to the same extent as when the same were respectively assigned, except so far as such claims shall have been in fact paid under the operation of said agreements; (5) that until said claims so assigned shall be satisfied in manner aforesaid and pursuant to the terms aforesaid, the several and respective holders of the new bonds and debentures provided to be issued as aforesaid, shall be beneficially interested in said assigned claims and the proceeds thereof, and the amounts of money or property collectible or realizable thereon or purchaseable or purchased therewith, in the same proportions and according to the same order and priority in which they are, or may be, from time to time, interested in said new bonds and debentures; (6) that after satisfaction of the said new bonds so to be issued in case the same shall be satisfied by means of a sale, the remaining proceeds of said sale shall be appropriated to the use and benefit of the holders of said debentures, according to the order and priority of such debentures, as fixed by said agreement of Oct. 1, 1876; (7) that in case said decrees, or either of them, shall be enforced, and a sale shall be made of any of the property covered thereby, the said assigned claims shall and may, so far as they may remain unsatisfied, be used and appropriated according to the terms and provisions of said decrees respectively in the purchase of the property so brought to sale, and that thereupon the title so acquired by such use and appropriation of such assigned claims shall become and be subject to the lien of this mortgage and the bonds secured thereby, and also to the lien, operation, and effect of the deeds of trust made simultaneously herewith for the benefit of the

holders of preferred income and sinking fund de- 409
bentures ; and

Whereas said new bonds are now about to be issued accordingly, and are to be substantially in the following form :

(Form of Bond.)

"The Mobile & Ohio Railroad Company acknowledges itself to be indebted to the bearer, or to the registered holder hereof, for value received, in 410
the sum of one thousand dollars in gold coin of the United States of the present standard of weight and fineness, and hereby promises to pay such sum to the bearer hereof, or to the registered holder hereof, at its agency in the City of New York, on the first day of December, A. D. 1927, and also meanwhile to pay the interest thereon at the rate of six per cent. per annum, as expressed in the coupons herewith issued, on the first days of June and December respectively in each year, on the presentation 411
of the said coupons as they severally become due.

"This bond is issued under and in pursuance of certain agreements for the compromise, extension and forbearance of the original indebtedness of the said The Mobile & Ohio Railroad Company, and is not received by the holder in payment or extinguishment of such original indebtedness in whole or in part, except as provided for in and by the agreements and mortgage herein referred to ; and it is one
of an issue amounting in the aggregate to seven mil- 412
lions of dollars principal money, and is entitled to the benefit and security of certain degrees establishing and adjusting such original indebtedness until such decrees shall be satisfied, cancelled or extinguished, as well as to the benefit of a mortgage made by the said The Mobile and Ohio Railroad Company to the Farmers' Loan and Trust Company, as Trustees,

bearing even date herewith, and to the benefit of the covenants and conditions in said agreements, decrees, and mortgage contained, and is issued subject to the rights given and conferred by said agreements, decrees, and mortgage, to all of which reference is hereby made. And it is agreed that in case payment of any of the coupons issued with this bond shall be refused upon presentation of such coupon as provided therein at or after the maturity of such coupon, and if such non-payment shall continue for the space of six months after such presentation, then and in that case the principal sum secured by this bond shall become and be immediately due and payable, anything herein contained to the contrary notwithstanding.

"The holder of this bond may, from time to time, have the same registered on the books of said Railroad Company, on payment of such fee therefor and under such regulations as the Company may establish, such registry being noted on the bond itself by the Company's transfer agent, after which no transfer shall be valid unless made on said books by the registered holder, in person or by attorney duly authorized, and simultaneously noted on the bond, but the same may be discharged from registry by being in like manner transferred to bearer, after which it shall be transferable by delivery. The registry of the bond as above shall not restrain the negotiability of the coupons by delivery, but the coupons may be surrendered and interest on the bond will thereafter be payable only to the registered holder of the bond.

"This bond shall not be entitled to the benefit of the security provided as above, nor operate against said Company as an evidence of debt or otherwise until there shall be endorsed hereon a certificate signed by the Farmers' Loan and Trust Company or its successors, identifying the same as being one of

the bonds issued under the said mortgage of seven 417
millions of dollars.

"In testimony whereof, the said The Mobile and Ohio Railroad Company has hereunto set its corporate seal and caused these presents to be attested by its President and Secretary, the day of 1879.

*President.*"

*Secretary.*" 418

(FORM OF COUPON):

"The Mobile & Ohio Railroad Co. will pay bearer, in any lawful money of the United States, the sum of thirty dollars, on the day of , 18 , at the agency of the said Company, in the City of New York, or at Mobile, at the option of the holder hereof, being interest on mortgage bond, No.

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*Treasurer.*"

And whereas, said debentures are to be in substantially the following form:

(*Form of Preferred Income and Sinking Fund Debentures.*)

This is to certify that is entitled to the sum of dollars out of the Sinking Fund created by the Mobile and 420
Ohio Railroad Company for the benefit of the holders of the several series of preferred income and sinking fund debentures issued by it, which sinking fund is created by and described in the deed of trust made by the said Railroad Company to the Farmers' Loan and Trust Company, bearing date the first day of May, 1879. The said sinking fund consists of the

proceeds of the lands described in the said trust deed, and of the surplus income so far as directed by said deed of trust, which proceeds and surplus income are to be applied to the purchase of the said prrferred income and sinking fund debentures in the order of their priority and in the manner directed by the said deed of trust.

"This debenture is issued pursuant to the terms of certain agreements heretofore made by the said Railroad Company for the compromise, extension and forbearance of its former indebtedness, and it does not bear interest at any fixed annual rate; but whenever it shall be ascertained that the net earnings or income of any one year amount to one per cent. or a multiple of one per cent. upon the principal amount of debentures embraced in any one series of debentures, after providing for prior charges on the gross earnings, such net earnings or income for that year are to be applied, pursuant to the terms of said trust deed, to the payment of interest on such series of debentures, no one payment of interest to exceed seven per cent. on the principal amount of such debentures; and the board of directors of said Railroad Company, in whose election the debenture holders participate, as provided in said trust deed, are to determine the amount of such net earnings or income so applicable to the payment of interest.

"The registered holder of this debenture is entitled, at the meetings of the holders of said debentures to be held pursuant to the terms and provisions of said trust deed, to cast one vote for each one hundred dollars of principal money herein expressed, upon the question of instructing the trustee named in said trust deed, and its successors, how to vote for directors of the Mobile and Ohio Railroad Company; and the holder of this debenture is also entitled to cast a like vote at all other meetings of

said debenture holders called pursuant to the terms of the said trust deed, for any purpose for which said debenture holders may properly and lawfully be convened. This debenture is transferable only upon the books of the said The Mobile & Ohio Railroad Company at the City of New York, in person or by attorney, only upon the surrender of this certificate, and under such regulations as the board of directors of said Railroad Company may from time to time prescribe. 425

"In witness whereof, the said The Mobile and Ohio Railroad Company has hereunto set its corporate seal, and caused these presents to be attested by its officers thereunto duly authorized, this day of 18 . 426

[L. S.]

*President.*

*Secretary.* 427

Countersigned and registered.

*Trustee.*"

And whereas it was agreed that the said new bonds and debentures should be issued to said Hays and Du Puy, as survivors of said Pierson, and disposed of and appropriated by them, pursuant to the terms of said agreement of October 1st, 1876, without, however, being received in present payment or extinguishment of the claims so assigned to said Hays, Pierson and Du Puy, in whole or in part, but being received by said Hays and Du Puy and disposed of under said agreement only as conditional payment and extinguishment of such claims, and to be final and full payment only upon the conditions above expressed; and it was also agreed by said Railroad 428

421 proceeds of the lands described in the said trust deed, and of the surplus income so far as directed by said deed of trust, which proceeds and surplus income are to be applied to the purchase of the said prrferred income and sinking fund debentures in the order of their priority and in the manner directed by the said deed of trust.

"This debenture is issued pursuant to the terms of certain agreements heretofore made by the said Railroad Company for the compromise, extension
422 and forbearance of its former indebtedness, and it does not bear interest at any fixed annual rate; but whenever it shall be ascertained that the net earnings or income of any one year amount to one per cent. or a multiple of one per cent. upon the principal amount of debentures embraced in any one series of debentures, after providing for prior charges on the gross earnings, such net earnings or income for that year are to be applied, pursuant to the terms of said trust deed, to the payment of interest on such
423 series of debentures, no one payment of interest to exceed seven per cent. on the principal amount of such debentures; and the board of directors of said Railroad Company, in whose election the debenture holders participate, as provided in said trust deed, are to determine the amount of such net earnings or income so applicable to the payment of interest.

"The registered holder of this debenture is entitled, at the meetings of the holders of said debentures to be held pursuant to the terms and provisions
424 of said trust deed, to cast one vote for each one hundred dollars of principal money herein expressed, upon the question of instructing the trustee named in said trust deed, and its successors, how to vote for directors of the Mobile and Ohio Railroad Company; and the holder of this debenture is also entitled to cast a like vote at all other meetings of

said debenture holders called pursuant to the terms 425
of the said trust deed, for any purpose for which said debenture holders may properly and lawfully be convened. This debenture is transferable only upon the books of the said The Mobile & Ohio Railroad Company at the City of New York, in person or by attorney, only upon the surrender of this certificate, and under such regulations as the board of directors of said Railroad Company may from time to time prescribe.

"In witness whereof, the said The Mobile 426
and Ohio Railroad Company has hereunto set its corporate seal, and
[L. S.] caused these presents to be attested by its officers thereunto duly authorized, this day of 18 .

*President.*

*Secretary.* 427

Countersigned and registered.

*Trustee.*"

And whereas it was agreed that the said new bonds and debentures should be issued to said Hays and Du Puy, as survivors of said Pierson, and disposed of and appropriated by them, pursuant to the terms of said agreement of October 1st, 1876, without, however, being received in present payment or extin- 428
guishment of the claims so assigned to said Hays, Pierson and Du Puy, in whole or in part, but being received by said Hays and Du Puy and disposed of under said agreement only as conditional payment and extinguishment of such claims, and to be final and full payment only upon the conditions above expressed; and it was also agreed by said Railroad

Company with said Hays, Pierson and Du Puy that in case any of the property of the said Railroad Company shall be taken or seized in execution or by any creditor for the purpose of sale, or for the purpose of satisfying the claims of such creditor, or in case any person who has failed or omitted or refused to transfer or assign his claims to the said Hays, Pierson and Du Puy, or to the survivors of them or their successors, and who is entitled to the benefit of either of said decrees, shall insist upon and succeed in bringing to execution either of the said decrees; or in case that said Railroad Company shall make default in the payment of the interest on any of the said new bonds, and such interest shall remain in arrear and unpaid for the space of six months; or in case said Railroad Company shall make default in the payment of the principal of any of the said new bonds, then, in any or either of such cases, the said indebtedness, as well that secured by the mortgages and decrees hereinbefore recited as the other indebtedness and claims assigned to said Hays, Pierson and Du Puy, or the survivors of them or their successors, so far as the same shall not previously have been cancelled, satisfied, reduced or extinguished, may, upon an equal footing as to grade and priority of security with the holders of like or corresponding claims, not assigned to the said Hays, Pierson, and Du Puy, or the survivors of them, or their successors, be immediately enforced in full for the benefit of the holders of the said new bonds and debentures, according to their order and priority as specified in said agreement of October 1, 1876; and

Whereas some of the creditors of said Railroad Company whose claims are secured by the mortgages heretofore issued by said Railroad Company, or whose claims are unsecured, have not actually transferred or assigned their bonds or claims to the

said Hays, Pierson and Du Puy, nor to the survivors of them, pursuant to the terms of said agreement and transfer of October 1st, 1876; and 433

Whereas the said William H. Hays and T. Haskins Du Puy, under and pursuant to said agreement of October 1, 1876, intend to retain, out of said bonds and debentures so issued or to be issued, such portions thereof as are required for distribution among the creditors of said Company who became parties to said agreement of October 1, 1876, and such portion thereof as they are authorized to 434 retain and appropriate for the purpose of providing for the expenses incurred under said agreement, and in carrying the same into effect; and

Whereas some others of the bonds secured by the former first and other mortgages of said Company, which appear by the books of the said Company to have been issued, are believed to have been lost or destroyed, or in fact paid, canceled or extinguished, so that no equivalent amount of bonds or debentures will ever be required to be issued to actual 435 holders of said former bonds and claims, under the terms of said agreement of October 1st, 1876; and

Whereas the said William H. Hays and T. Haskins Du Puy, out of the total amount of said bonds and debentures so now freshly issued or about to be issued, desire to set apart a sufficient number to provide for such of said claims against said Railroad Company as have not yet been assigned pursuant to said agreement of October 1, 1876, but may be hereafter proposed to be assigned: 436

Now, this indenture witnesseth: That the said William H. Hays and T. Haskins Du Puy, by and with the consent of the said party of the second part, testified by its execution of these presents, for and in consideration of the premises, and for the purposes hereinafter expressed, have bargained and sold, assigned, transferred and set over, and by

these presents do bargain and sell, assign, transfer and set over unto the said The Farmers' Loan and Trust Company and its successors in the trusts hereby created, all and singular the first and second and other mortgage bonds of The Mobile and Ohio Railroad Company, and all other claims and demands which have been heretofore or may be hereafter assigned and transferred to the said William H. Hays, William S. Pierson and T. Haskins Du Puy, or to the survivors of them or their successors, under or pursuant to said agreement of October 1st, 1876, together with the benefit of the aforesaid decrees of the said Circuit Courts of the United States respectively, and the right, claim and interest of said Hays, Pierson and Du Puy in, to, under or by virtue of said decrees; TO HAVE AND TO HOLD THE SAME subject to the terms of said agreement of October 1st, 1876, and to the terms of the said agreements for compromise, extension, and forbearance hereinabove recited and set forth; with the same rights, powers, interests, privileges and authority in relation to said bonds, claims and decrees which said Hays, Pierson and Du Puy had, or any of them have under said agreements, and pursuant to the terms of said agreement of October 1st, 1876, it being understood and declared that the said original first mortgage bonds of 1853, and other claims hereby assigned to the said The Farmers' Loan and Trust Company, are to be held for the benefit and security of the owners of said new first mortgage bonds and debentures, upon an equal footing with any holders of said original first mortgage bonds who shall not heretofore have assigned and transferred, or shall not hereafter assign and transfer, their demands to the said Hays and Du Puy, or to the said The Farmers' Loan and Trust Company; and that for the purpose of the security of the holders and owners of said new first mortgage bonds and

debentures, the bonds and other claims hereby as- 441
signed are not to be deemed as paid nor reduced in amount, except upon the conditions and contingencies specified in said agreements of compromise, extension and forbearance made by said Hays, Pierson and Du Puy, as hereinabove recited and set forth.

And it is agreed that, in case the said The Mobile & Ohio Railroad Company shall make default in payment of either the principal or interest which shall hereafter mature or become payable upon said 442
new issue of bonds, or in the performance of the obligations expressed in said debentures, and such default in payment of interest on such new bonds shall continue for the space of six months, or in case default in the payment of the principal of any such bonds shall occur, or in case of any of the property of the said The Mobile & Ohio Railroad Company, of any description, shall be taken or seized in execution or under other process for the satisfaction of any debt heretofore incurred or which may here- 443
after be incurred by the said The Mobile & Ohio Railroad Company, then the said decrees of the Circuit Courts of the United States, so far as the same shall not previously have been reduced in amount or satisfied, released, canceled or extinguished, shall be and become capable of immediate enforcement, and they shall likewise be and become to the same extent capable of immediate enforcement for the benefit of the holders of said new issue of bonds and debentures, in case any holders of the 444
old issue of first mortgage bonds, or other bonds of or claims against said railroad company, who have not become parties to said agreement of October 1st, 1876, shall require either of the said decrees to be enforced, and shall succeed in having the same enforced, and that so far as the said The Farmers' Loan & Trust Company, and its successors in said trusts,

445 shall be the holders of any of said old first or other mortgage bonds or claims hereby assigned, then the said The Farmers' Loan & Trust Company, and its successors in such trusts, as such holders, shall be entitled to the benefit of said decrees and to their proportion of the proceeds of the use, operation and sale of the property described therein, upon an equal footing with the holders of like or corresponding securities described in said decrees, or entitled to the benefit thereof, who shall have not become
446 parties to said agreement of October 1st, 1876; and whatever sums of money or whatever other property The Farmers' Loan & Trust Company, or its successors in such trusts, shall become entitled to upon the enforcement of said decrees or upon the sale of said property, shall be held by it for the equal benefit of the holders of said new issue of bonds of The Mobile & Ohio Railroad Company in the first instance, and then for the benefit of the holders of said debentures according to their order
447 and priority.

And in case of the enforcement of said decrees or either of them, the said The Farmers' Loan & Trust Company may use and appropriate the said securities hereinabove assigned, in the purchase of the mortgaged property described in said decrees, and in that case the title so acquired shall become and be subject to the lien, operation and effect of said mortgage and trust deed of May 1, 1879, pursuant to the agreements hereinabove recited and set forth;
448 and upon acquiring such title by means of such use and appropriation of such assigned securities, the said The Farmers' Loan & Trust Company, and its successors, may and shall, if so requested by the said The Mobile & Ohio Railroad Company, reconvey such purchase property and estate to the said railroad company subject to and upon its assuming and providing for the obligations created by said

new mortgage and trust deed, and the bonds and 449
debentures thereby provided for.

AND THIS INDENTURE FURTHER WITNESSETH, that the said William H. Hays and T. Haskins Du Puy, for and upon the considerations aforesaid, have bargained and sold, assigned, transferred and set over, and by these presents do bargain and sell, assign, transfer and set over, unto the said The Farmers' Loan & Trust Company of the City of New York, mortgage bonds and debentures of the new issue of 450
the Mobile & Ohio Railroad Company, sufficient for the purposes hereinafter stated, after making the reservations above recited, for the following uses, trusts and purposes, that is to say:

IN TRUST to use the same in carrying into effect the provisions of said agreement of October 1st, 1876, by exchanging the same, so far as may be necessary or expedient, or practicable, with the holders of any of the old first mortgage or other bonds or claims against the Mobile & 451
Ohio Railroad Company, who have not yet become parties to said agreements of compromise, forbearance and extension, and who may hereafter desire to become such parties or to accept the terms therein expressed; or in case such exchange cannot be effected, then to sell the said bonds and debentures of the new issue hereby assigned to the said The Farmers' Loan & Trust Company, and to appropriate the proceeds of the sale thereof to taking up, paying or purchasing such old bonds and claims 452
as can be purchased, the holders of which may refuse or omit to become parties to said agreements of compromise, extension and forbearance; or in case The Mobile & Ohio Railroad Company shall take up, or there shall be taken up, paid or provided for out of its funds, income or property, any first mortgage or other bond or claim which shall be held by

453 persons who shall not have become parties to said agreement of October 1st, 1876, then it shall be the duty of the Farmers' Loan & Trust Company to transfer, assign and deliver to The Mobile & Ohio Railroad Company, for its own use, the same proportionate amount of the new bonds and debentures hereby assigned to it, which the holder of the bond or claim so taken up or paid by said Mobile & Ohio Railroad Company, or out of its funds, income, or property, would have been entitled to under the
454 provisions of said agreement of October 1st, 1876: Provided, however, that said party of the third part and its successors shall not pay to any creditor of said railroad company who does not become, or has not become, a party to said agreement of October 1st, 1876, any larger sum out of the proceeds of sales of said new bonds and debentures hereby assigned than he would be entitled to in case he had become such party to said agreement and had accepted his proportion of said new bonds and deben-
455 tures, and such proportion, after being so accepted by him, had been converted into money for his account; and in case of a sale of said property or any portion thereof under said decrees or either of them and a reconveyance of such property to the said railroad company, pursuant to this instrument, then such of the new securities hereby assigned as shall not theretofore have been disposed of, for the uses herein directed, shall be transferred and delivered to the said railroad company. And it is agreed
456 that whatever dividends or payments of money shall be, from time to time, made upon the old bonds, securities and claims hereby assigned by the said railroad company or out of its funds, income or property, shall, by the said The Farmers' Loan & Trust Company and its successors, be in the first instance applied, in pursuance of the trusts hereby created, to the payment of the interest coupons or

warrants attached to the new bonds now freshly 457
issued or to be issued by the railroad company as aforesaid (excluding any of such bonds now hereby assigned to the said The Farmers' Loan & Trust Company, so long as the same remain in the hands of the said The Farmers' Loan & Trust Company) in the order of the maturity of such coupons or warrants, and that so far as such money shall not be required for that purpose, the surplus thereof shall be transferred to the sinking fund provided by the trust deed of even date herewith, for the 458
benefit of the holders of the said debentures.

And it is further agreed that in case said decrees, or either of them, shall be enforced or carried into effect or brought to execution by sale, and the said The Farmers' Loan & Trust Company, or its successors in said trust, shall become the purchaser of the property so brought to sale, the said new bonds and debentures hereby assigned may, so far as necessary, be used and appropriated in the purchase of such property, or for the purpose of rais- 459
ing such cash or money or funds as it may be necessary or requisite to raise in order to pay into Court the money required to be paid by the terms of said decrees or on such sale; and that the right and title to said old or new securities hereby created shall not, so long as it subsists in any manner or to any extent, merge in the title created by the said mortgage or trust deed; and that neither the title created by said new mortgage or by said new trust deed shall, so long as they subsist respectively, merge 460
in the title and right created by this instrument; and that in case of a sale of such mortgaged property, or any part thereof, under said decrees or either of them, and in case of the purchase by the said party of the third part or its successors of the property so sold by the use and appropriation of the said old securities hereby assigned, then a proportionate part

461 of the price bid on such sale shall be considered as applied in reduction of the principal amount due on said old mortgage bonds hereby assigned, and the amount expressed in said new mortgage bonds shall be considered as also applied in like reduction, and the balance then due upon said old mortgage bonds shall be and remain due by the said Railroad Company upon the said old securities, subject to the lien, operation and effect of the said new mortgage trust deed, and a recovery may be had therefor according
462 to law by proceedings in said foreclosure suits heretofore brought as aforesaid, or by such other proceedings as may be necessary and proper, and that so long as any of the said new bonds, debentures and coupons hereby assigned shall remain in the hands of the said party of the third part, or its successors, not exchanged or sold for any of the purposes herein expressed, no demand of payment thereof or thereon shall be made upon the said Railroad Company, and said Railroad Company shall
463 not be obliged to pay the same, nor deemed to be in default or liable to any suit or proceeding by reason of omitting or refusing to pay the same.

In witness whereof, the said parties of the second and third parts have hereunto set their respective corporate seals, and caused these presents to be attested by their respective officers, thereunto duly authorized, and the said parties of the first part have set their hands and seals the day and year first above written.

464 (Sgd.) W. H. HAYS. [L. s.]
(Sgd.) T. HASKINS DEPUY. [L. s.]
(Sgd.) SAML. C. MULDON.

[L. s.] THE MOBILE & OHIO RAILROAD COMPANY,
by
(Sgd.) A. L. RIVES, *Vice President.*
Attest: (Sgd.) A. L. WILLOUGHBY, *Secretary.*

[L. S.] THE FARMERS' LOAN & TRUST COMPANY, 465
by
(Sgd.) R. G. ROLSTON, *President.*
Attest: (Sgd.) GEO. P. FITCH.

STATE OF NEW YORK, }
*City and County of New York.* } ss.:

Be it remembered, that on this 22d day of May, A. D. 1879, before me, Charles Nettleton, a Notary 466
Public of the State of New York, in and for the County of New York, duly commissioned and sworn and dwelling in said City of New York, personally came William H. Hays and T. Haskins DuPuy, to me personally known to be the same persons described in and who executed the foregoing instrument, who signed and sealed the same in my presence and acknowledged to me that they had executed the same as their free act and deed for the uses and purposes therein mentioned. 467

In witness whereof, I have hereunto set my hand and affixed my official seal, the 22d day of May, A. D. 1879.

[SEAL.] (Sgd.) CHARLES NETTLETON,
*Notary Public for New York, State of New York.*
117 Broadway, N. Y. City.

STATE, CITY AND COUNTY }
OF NEW YORK. } ss.:

Be it remembered, that on this 22d day of May, 468
A. D. 1879, before me, Charles Nettleton, a Notary Public of the State of New York, for the County of New York, residing in said City of New York, personally appeared Rosewell G. Rolston, the President of The Farmers' Loan & Trust Company, to me personally known to be such, who being duly sworn did depose and say that he resided in the

City and State of New York, that he was the President of the said Company, that he knows the corporate seal of said Company, that the seal affixed to the foregoing instrument is such corporate seal, that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order as the President of said The Farmers' Loan & Trust Company, and the said Rosewell G. Rolston being personally known to me to be the individual within described, acknowledged to me that he had executed the foregoing instrument as the act and deed of The Farmers' Loan & Trust Company for the purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal this 22d day of May, A. D. 1879.

(Sgd.) CHARLES NETTLETON,
*Notary Public for New York, State of New York,*
117 Broadway, N. Y. City.

THE STATE OF ALABAMA, }
*County of Mobile.* }

Be it remembered, that on this, the 7th day of June, A. D. 1879, before me, Saml. C. Muldon, a Notary Public in and for the County of Mobile, State of Alabama, and Port of Mobile, personally appeared A. S. Rives, the Vice-President of the Mobile and Ohio Railroad Company, to me personally known to be such, who being by me duly sworn did depose and say that he resides in the Port of Mobile, that he is the Vice-President of the Mobile and Ohio Railroad Company, that he knows the corporate seal of said Company, that the seal affixed thereto by order of the Board of Directors of said

Company to the foregoing instrument is such corporate seal, and that he signed his name thereto by the orders of said Board of Directors of said Company as the Vice-President of said Company. And the said A. L. Rives, Vice-President afore mentioned, being personally known to me to be the individual within described, acknowledged to me that he had executed the foregoing instrument as the free act and deed of the said The Mobile & Ohio Railroad Company for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and seal as Notary Public in and for the Port of Mobile, County of Mobile and State of Alabama, this, the seventh day of June, A. D. 1879.

[SEAL.] (Sgd.) SAML. C. MULDON,
*Notary Public,*
*Mobile County.*

# POWER OF ATTORNEY

TO

THE FARMERS' LOAN & TRUST CO., (NEW YORK),

TRUSTEES.

To all whom these presents shall come, or whom they may concern, we, William H. Hays and T. Haskins Du Puy, send greeting:

Whereas, we, as survivors of William S. Peirson in the Committee of Reorganization, so called, of the Mobile & Ohio Railroad Company, are holders of shares of the capital stock of the said railroad company standing in the names of Hays, Peirson and Du Puy on the books of the said company; and

Whereas, under an agreement bearing date the first day of October, 1876, made by and between the said railroad company and said Hays, Pierson and Du Puy, the sundry of the creditors of the said company, certain provisions were made for the benefit of the holders of claims against said company, in pursuance of which provisions Preferred Income and Sinking Fund Debentures were or are about to be issued to the former holders of many of said claims; and

Whereas, a trust deed has been or is about to be executed and delivered by the said railroad company to The Farmers' Loan & Trust Company, its successors or assigns, conveying certain property for the benefit and security of the holders of said debentures, and it is a part of said arrangements (evidenced by the said agreement and said trust deed) that for the security of the said debenture holders the said The Farmers' Loan & Trust Company, its successors or assigns, shall have power and authority (irrevocable while any of the said

debentures remain outstanding) to act as proxy and 481
vote for the holders of said shares of stock at any
meetings of the shareholders of the said company
which may be convened pursuant to law or to the
charter or by-laws of said company.

Now, know ye that we, the said William H.
Hays and T. Haskins Du Puy, as survivors as afore-
said, for and in consideration of the premises and
of the sum of one dollar to us in hand paid by the
said The Farmers' Loan & Trust Company, the re-
ceipt whereof is hereby acknowledged, and for the 482
better security of the holders of the said debentures
and in pursuance and in consummation of said
agreements, while retaining for ourselves and our
assigns, holders of the said shares of stock and the
respective parcels into which the same may here-
after be sub-divided, all other rights and privileges
which pertain to the ownership of said stock, have
nominated, constituted, and appointed in our place
and stead, put and deputed, and by these presents
do nominate, constitute and appoint, and in our 483
place and stead put and depute the said The
Farmers' Loan & Trust Company, and its successors
in the trust created by the said trust deed, for us
and in our names and in the names of our assigns,
holders of said shares, or any of the several parcels
into which they may be hereafter sub-divided, or
lawfully otherwise (irrevocable while any of the said
debentures are outstanding) to vote, pursuant to the
charter and by-laws of the said company and law-
fully otherwise, and as fully to all intents and pur- 484
poses as we ourselves or our assigns while holders
of said shares or any of them, could vote at any
meeting of the stockholders of said corporation
which may hereafter be called; and that as fully to
all intents and purposes as the holders of said
shares and the respective parcels thereof could do if
these presents had not been executed, with full

power of appointing substitutes and proxies and revoking such appointments and making new ones. And we hereby covenant and agree for ourselves and our assigns, holders of the said shares of stock or any thereof, that so long as any of the said debentures be outstanding neither we nor our successors nor any of our assigns, holders of the said shares of stock shall or will withdraw the power and authority hereby given, nor undertake to exercise the privilege of voting upon said shares of stock or any or either thereof without the consent of our said attorneys hereby constituted; and we hereby ratify and confirm all that our said attorneys and their substitute or substitutes, proxy or proxies lawfully appointed shall lawfully do by virtue hereof.

Witness our hands and seals at the city of New York, this

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**[Form of Bond.]**

FIRST MORTGAGE BOND. ISSUE OF 1879.

Principal Due 1927. Issue Limited to $7,000,000.

No. $1,000.

UNITED STATES OF AMERICA,

States of Alabama, Mississippi, Tennessee and Kentucky.

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"The Mobile & Ohio Railroad Company acknowledges itself to be indebted to the bearer, or to the registered holder hereof, for value received, in the sum of one thousand dollars in gold coin of the

United States of the present standard of weight and 489
fineness, and hereby promises to pay such sum to the bearer hereof, or to the registered holder hereof, at its agency in the City of New York, on the first day of December, A. D. 1927, and also meanwhile to pay the interest thereon at the rate of six per cent. per annum, as expressed in the coupons herewith issued, on the first days of June and December respectively in each year, on the presentation of the said coupons as they severally become due.

"This bond is issued under and in pursuance of 490
certain agreements for the compromise, extension and forbearance of the original indebtedness of the said The Mobile & Ohio Railroad Company, and is not received by the holder in payment or extinguishment of such original indebtedness in whole or in part, except as provided for in and by the agreements and mortgage herein referred to; and it is one of an issue amounting in the aggregate to seven millions of dollars principal money, and is entitled to the benefit and security of certain decrees establishing 491
and adjusting such original indebtedness until such decrees shall be satisfied, cancelled or extinguished, as well as to the benefit of a mortgage made by the said The Mobile and Ohio Railroad Company to the Farmers' Loan and Trust Company, as Trustees, bearing even date herewith, and to the benefit of the covenants and conditions in said agreements, decrees, and mortgage contained, and is issued subject to the rights given and conferred by said agreements, decrees, and mortgage, to all of which refer- 492
ence is hereby made. And it is agreed that in case payment of any of the coupons issued with this bond shall be refused upon presentation of such coupon as provided therein at or after the maturity of such coupon, and if such non-payment shall continue for the space of six months after such presentation, then and in that case the principal sum se-

493 cured by this bond shall become and be immediately due and payable, anything herein contained to the contrary notwithstanding.

"The holder of this bond may, from time to time, have the same registered on the books of said Railroad Company, on payment of such fee therefor and under such regulations as the Company may establish, such registry being noted on the bond itself by the Company's transfer agent, after which no transfer shall be valid unless made on said books by the
494 registered holder, in person or by attorney duly authorized, and simultaneously noted on the bond, but the same may be discharged from registry by being in like manner transferred to bearer, after which it shall be transferable by delivery. The registry of the bond as above shall not restrain the negotiability of the coupons by delivery, but the coupons may be surrendered and interest on the bond will thereafter be payable only to the registered holder of the bond.

495 "This bond shall not be entitled to the benefit of the security provided as above, nor operate against said Company as an evidence of debt or otherwise until there shall be endorsed hereon a certificate signed by the Farmers' Loan and Trust Company or its successors, identifying the same as being one of the bonds issued under the said mortgage of seven millions of dollars.

"In testimony whereof, the said The Mobile and Ohio Railroad Company
496 has hereunto set its corporate seal and caused these presents to be attested by its President and Secretary, the first day of May, 1879.

*President.*"

*Secretary.*"

[**Form of Coupon.**] 497

"The Mobile & Ohio Railroad Co. will pay bearer, in any lawful money of the United States, the sum of thirty dollars, on the first day of June, at the agency of the said Company, in the City of New York, or at Mobile, at the option of the holder hereof, being interest on mortgage.

Bond No.

A. L. WILLOUGHBY,
*Treasurer.*"

498

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[**Form of Debenture.**]

First Preferred (Second, Third and Fourth) Income and Sinking Fund Debenture.

UNITED STATES OF AMERICA,

States of Alabama, Mississippi, Tennessee and Kentucky. 499

No. $1,000.

THE MOBILE & OHIO RAILROA COMPANY.

This is to certify that is entitled to the sum of dollars out of the Sinking Fund created by the Mobile and Ohio Railroad Company for the benefit of the holders of the several series of preferred income and sinking fund debentures issued by it, which sinking 500 fund is created by and described in the deed of trust made by the said Railroad Company to the Farmers' Loan and Trust Company, bearing date the first day of May, 1879. The said sinking fund consists of the proceeds of the lands described in the said trust deed, and of the surplus income so far as directed by said deed of trust, which proceeds and surplus

501 income are to be applied to the purchase of the said preferred income and sinking fund debentures in the order of their priority and in the manner directed by the said deed of trust.

"This debenture is issued pursuant to the terms of certain agreements heretofore made by the said Railroad Company for the compromise, extension and forbearance of its former indebtedness, and it does not bear interest at any fixed annual rate; but whenever it shall be ascertained that the net earnings
502 or income of any one year amount to one per cent. or a multiple of one per cent. upon the principal amount of debentures embraced in any one series of debentures, after providing for prior charges on the gross earnings, such net earnings or income for that year are to be applied, pursuant to the terms of said trust deed, to the payment of interest on such series of debentures, no one payment of interest to exceed seven per cent. on the principal amount of such debentures; and the board of directors of said
503 Railroad Company, in whose election the debenture holders participate, as provided in said deed of trust, are to determine the amount of such net earnings or income so applicable to the payment of interest.

"The registered holder of this debenture is entitled, at the meetings of the holders of said debentures to be held pursuant to the terms and provisions of said deed of trust, to cast one vote for each one hundred dollars of principal money herein express-
504 ed, upon the question of instructing the trustees named in said trust deed, and its successors, how to vote for directors of the Mobile and Ohio Railroad Company; and the holder of this debenture is also entitled to cast a like vote at all other meetings of said debenture holders called pursuant to the terms of the said trust deed, for any purpose for which said debenture holders may properly and lawfully

be convened. This debenture is transferable only 505
upon the books of the said The Mobile & Ohio Railroad Company at the City of New York, in person or by attorney, upon the surrender of this certificate, or upon a simultaneous endorsement hereon, and under such regulations as the board of directors of said Railroad Company may from time to time prescribe.

"In witness whereof, the said The Mobile and Ohio Railroad Company has hereunto set its corporate seal, and 506
[L. S.] caused these presents to be attested by its officers thereunto duly authorized, this day of 18 .

*President.*

*Secretary.*

Countersigned and registered.

507

THE FARMERS' LOAN & TRUST COMPANY,
*Trustees.*"

By

*President.*

508

509 **[Form of Stock Certificate.]**

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ALABAMA, MISSISSIPPI, TENNESSEE AND KENTUCKY.

Authorized Capital, $10,000,000.

Number, Shares.

510 MOBILE & OHIO RAILROAD COMPANY.

ASSENTED.

Be it known that entitled to shares of the Capital Stock of the Mobile & Ohio Railroad Company, one hundred dollars per share having been paid on the same, said shares being transferable on the books of the Company only by the above-named in person or by attorney, upon the surrender of
511 this certificate, and subject to the power of attorney herein referred to.

It is understood and declared that the ownership by the said and his assigns, of the said shares of stock, entitles them to all the rights and privileges which pertain to the ownership of the said shares, including the right to such dividends and profits as shall be ascertained and declared upon the capital stock of the said company, saving and excepting that such ownership is
512 subject to a power and authority heretofore granted by the owners of said shares to the Farmers' Loan and Trust Company, in trust for the benefit and security of the Preferred Income and Sinking Fund Debentures, issued by said Railroad Company, by virtue of which power and authority the said the Farmers' Loan and Trust Company is, and its successors will be entitled in person or by proxy to vote

upon the said shares of stock at all the meetings of 113
the stockholders of the said company, which may be hereafter for any purpose convened during the continuance of said trust, and so to vote in the name of either the present or future holders of said shares, or in the name of the said the Farmers' Loan and Trust Company, or its successors or proxies.

In witness whereof, the signature of the President and the counter signature of the Secretary and the seal 114
of said company are hereunto affixed this day of 18 .

*President.*

*Secretary.*

Countersigned and Registered,
The Farmers' Loan and Trust Co.,
*Registrars.*

by 115

*Pres't.*

116

## Deposition of Adrian Iselin.

1

CIRCUIT COURT OF THE UNITED STATES.

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement bonds of Tennessee issued to the Mobile & Ohio Railroad Co.,

*vs.*

THE MOBILE & OHIO RAILROAD CO.

2

Before WILLIAM H. DELANCEY,
*Notary Public*,
52 Broadway.

NEW YORK, April 16th, 1880. 3

Present—MR. L. E. WRIGHT,
*For Respondents.*
MR. E. L. ANDREWS,
*For Complainants.*

ADRIAN ISELIN, a witness produced on the part of the respondents, being by me first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says: 4

(Deposition taken subject to all legal objections of both parties.)

5 *Direct-examination* by Mr. WRIGHT:

1 Q. Please state your name, age, residence and occupation.

A. Adrian Iselin; residence New York City; of full age; banker and merchant.

2 Q. How long have you have been such banker and merchant?

A. Over thirty years.

3 Q. Were you in any way connected with the substitution by the Mobile & Ohio Railroad Com-
6 pany of its own bonds for the debt which it owed the State of Tennessee on account of bonds loaned to it under the Internal Improvement Laws of the State?

A. I was. I was appointed by the Mobile & Ohio Railroad Company in conjunction with Mr. R. T. Wilson and Wm. B. Duncan, its agent, to pay off the debt it owed the State of Tennessee, and to substitute therefor the bonds of the railroad company. I was also made trustee for these bonds.

7 4 Q. Please examine the copy here handed you of the proceedings of the Board of Directors of the Mobile & Ohio Railroad Company of the 25th of May, 1871, and state if these resolutions are the same by which Messrs. Wilson, Duncan and yourself were appointed trustees, and if the same is a true copy?

A. Yes.

(Copy offered in evidence; marked Respondents Exhibit No. 1, W. H. D. L., N. P.)

8

5 Q. Please examine copy of the Deed of Trust purporting to be made by said Mobile & Ohio Railroad Company to Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson as Trustees, and state whether the same is a true copy, and say whether the same was made and executed for the purposes therein set forth, and whether the 1685 bonds of

said company therein described were delivered to 9
said Duncan, Iselin and Wilson, trustees, and whether you are the Adrian Iselin therein mentioned as trustee?

A. I am the Adrian Iselin mentioned in this deed of trust as trustee, and as far as I can recollect this deed of trust, which I now submit in evidence, is a true copy of the one to which I subscribed my name; it was executed for the purposes therein set forth, and I know that the 1685 bonds therein mentioned were delivered to the trustees. 10

(Copy deed of trust offered in evidence; marked Respt's Exhibit No. 2, W. H. D. L., N. P.)

6 Q. Please state what was done by yourself and the other trustees mentioned in said deed of trust in the execution of your duties as agent of said Company and as trustee under said deed of trust. Give a full history, so far as you are cognizant of 11
the same, of the settlement with the State of Tennessee, if any was made, and of the disposition made of said Company's substitution bonds?

A. I had in conjunction with Messrs. Wilson & Duncan advanced to the Mobile & Ohio Railroad Company the cost of the Tennessee State bonds, bought by it through R. T. Wilson & Co., and when the Mobile & Ohio Railroad delivered to us the 1685 bonds mentioned in the deed of trust, I, in conjunction with Messrs. Wilson & Duncan delivered to the 12
agent of the State of Tennessee the State bonds on which we had made advances, and took his receipt for the payment of the debt due by the Mobile & Ohio Railroad Company, to the State of Tennessee. Exhibit No. 3, to the answer of the Mobile & Ohio Railroad Company in this suit is a true copy of this receipt. The Comptroller of the State of Ten-

13 nessee signed a certificate on each of the 1685 bonds issued by the Mobile & Ohio Railroad Company, stating in substance that the debt of the Mobile & Ohio Railroad Company to the State of Tennessee had been paid, and that the present bonds of the Railroad were guaranteed by the lien which the State held against the Mobile & Ohio Railroad Company as security for the debt due by it. I file herewith a copy of one of said bonds, they being all facsimilies, except as to the number:

14

(Copy bond offered in evidence; marked Respondent's Exhibit No. 3, W. H. D. L., N. P.)

These substitution bonds were then purchased by my firm of A. Iselin & Co., R. T. Wilson & Co., Duncan, Sherman & Co., and some bankers in Europe, and resold by us to a syndicate of European bankers. My firm and R. T. Wilson & Co. keeping an interest in this syndicate. The Syndicate
15 then advertised the bonds for sale, issuing a circular concerning them, signed by my firm. This circular was in French, a copy of which is herewith filed.

(Copy circular offered in evidence; marked Respt's Exhibit No. 4, W. H. D. L., N. P.)

A correct translation of the same is also herewith filed.

16

(Copy translation offered in evidence; marked Respt's Exhibit No. 5, W. H. D. L., N. P.)

The bonds were all sold in one day, and as far as I know, to parties living in Europe.

7 Q. State what information, if any, you gave to the European Syndicate who sold said substitution

bonds touching the validity of said bonds, and especially whether you communicated to them anything in reference to the opinion of Davies and Davis that the holders of the Tennessee State bonds originally loaned to railroads in Tennessee had a lien on the roads of said companies situated in Tennessee for the payment of said bonds, or that any holder of said Tennessee State bonds which had been loaned to said Mobile & Ohio R. R. Company claimed that said bonds constituted a lien upon the property of said company situated in Tennessee? 17 18

A. I gave no other information to the syndicate who had purchased the Mobile & Ohio substitution bonds as to the validity of these bonds except what was contained in the circular signed by my firm and which I have put in proof. I said nothing about Davies & Davis opinion because I attached no importance to it, and I could say nothing about the claim of Tennessee State bondholders against the railroads because no such claim had been made at the time these substitution bonds were put on the market. 19

8 Q. When was this opinion of Davies & Davis first called to your attention, and did the same receive any extensive circulation in New York or elsewhere?

A. In the Spring of 1870 at the time I was engaged in the purchase of the East Tennessee, Virginia & Georgia Railroad Company substitution bonds, I never saw but one copy of it, and did not hear that it had been circulated to any extent. Whilst the substitution bonds of the East Tennessee, Virginia & Georgia railroad, and the Nashville & Decatur Railroad were being advertised for sale, I never heard anything more about this opinion, nor that any holder of Tennessee State bonds had the intention to act upon it. 20

9 Q. When was it that the substitution bonds of

the East Tennessee, Virginia & Georgia Railroad Company, and of the Nashville & Decatur Railroad Company were offered for sale and when were they offered for sale. State also the amount of the issues of these two companies of their substitution bonds, and in this connection state all you know in relation to their sale on the New York market or elsewhere.

A. The bonds of the Nashville & Decatur Railroad Company were advertised for sale in several papers in New York on the 31st December, 1870. A circular in relation to them was also issued under date January, 1871.

(Copy advertisement and circular offered in evidence and marked Respondent's Exhibit No. 6, W. H. D. L., N. P.)

The amount of substitution bonds issued by the Nashville & Decatur Railroad Co. was $2,100,000. These were issued in the place of $2,702,997.10 due by the Nashville & Decatur to the State of Tennessee.

The substitution bonds of the East Tennessee, Virginia & Georgia Railroad Company were first offered for sale in Europe the summer of 1870, and a portion of them sold, and subsequently in 1871, $1,100,000 of these bonds were offered for sale in New York, a circular in relation to them was issued, and they were advertised in the papers; and I file herewith as a part of my answer a copy of said circular, and also copies of advertisements of the East Tennessee, Virginia & Georgia Railroad substitution bonds, which appeared in the *Commercial Advertiser*, *Tribune*, *Times*, *World*, *Journal of Commerce*, *Evening Post* and *Financial Chronicle;* the advertisement of the Nashville & Decatur substitution bonds appeared in *Evening Post*, *World*, *Commercial Advertiser*, *Bulletin*, *Times*, *Tribune*, *Observer*, *Christian Advocate*, *Independent*, *Fi-*

*nancial Chronicle of New York*, and *Union* of 25
Brooklyn.

(Copies advertisement and circular of East Tennessee, Virginia & Georgia Railroad Company substitution bonds offered in evidence, and marked Respondent's Exhibit No. 7, W. H. D. L., N. P.)

These advertisements were kept in these papers for some time; they are papers of the widest circula- 26
tion among commercial men.

The amount of substitution bonds issued by the East Tennessee, Virginia & Georgia Railroad Company was $3,500,000, in place of $4,117,761.10 due the State of Tennessee.

10 Q. During the time the substitution bonds of these two companies and of the Mobile & Ohio Company were being advertised, negotiated and sold, did you hear of any objection being made by any holder of Tennessee State bonds or any claims that said 27
bonds constituted a lien on these roads, and if you answer in the negative, state when it was that you first heard of any such claim being advanced by any holder of Tennessee State bonds.

A. No; I never heard of any claim being made by any holder of Tennessee State bonds as holding a lien against the railroads whilst the negotiation and sale of the Nashville & Decatur and East Tennessee, Virginia & Georgia Railroad and Mobile & Ohio substitution bonds were being made here and 28
in Europe; the first time I heard of such a claim being set up was in the fall of 1877; when the appeal was made to the Supreme Court of the United States in the case of the Mobile & Ohio Railroad.

11 Q. Do you know Ernest Saladin and Augusta Iselin, and if so how long have you known them, where do they reside; are they citizens of the Uni-

29 ted States, and if not of what country are they citizens or subjects?

A. I have known them both for more than twenty years; neither of them is a citizen of the United States; Ernest Saladin is a citizen of Switzerland, Augusta Iselin is a citizen of France.

12 Q. Did the said Ernest Saladin and Augusta Iselin, or either of them, become the purchasers of any of the substitution bonds of the said Mobile & Ohio R. R. Co. from said European syndicate, who
30 as you have already stated sold them; also state, if you know, when they became purchasers, and what they paid for said bonds, and give the number of bonds bought by each.

A. I know that both these parties did purchase Mobile & Ohio substitution bonds, but do not know whether they purchased them direct from the syndicate, or from other parties who had purchased them from the syndicate. Ernst Saladin purchased $6,000 of these bonds at about 91½
31 in gold; the other two thousand he owns, I do not know what he paid for them. The bonds were purchased before February, 1874, but I cannot tell the exact time when they were purchased. Augusta Iselin purchased six bonds in December, 1871. I do not know whether she purchased them from the syndicate or not, nor the exact price she paid for them, but it must have been at about 91 to 92, and accrued interest, in gold, as that was the price at which the bonds were sold at that
32 time.

13 Q. State whether the said Ernest Saladin and Augusta Iselin, or either of them, knew of the said opinion of Davies and Davis, or of the claim advanced by complainants and their associates, that the Tennessee bonds held by them which were loaned to the Mobile & Ohio R. R. Co. constitute a lien upon its property in Tennessee?

A. As far as the opinion of Davies and Davis is 33
concerned, I do not think it possible that they should have seen it or heard of it, and I never heard of any copy of it having been sent to Europe, and, as no mention of this opinion was ever made by any of our correspondents in Europe, they could not possibly have known at the time they purchased the bonds of the claim made by complainants, for this claim was only made many years after those bonds had been purchased by the above parties.

14 Q. State, if you know, whether the entire is- 34
sue of said Mobile & Ohio Tennessee substitution bonds was sold in Europe to purchasers residing there, and whether the same statements you have made with reference to the want of knowledge of said Saladin and Iselin of the opinion of Davies and Davis, and of the claim advanced by complainants and other holders of Tennessee State bonds loaned to the Mobile & Ohio R. R. Co. by the State, of a lien on the property of said company situated in Tennessee, applies to such other purchasers? 35

A. The whole of the Mobile & Ohio substitution bonds were sold to parties residing in Europe, and they could not have any more knowledge of Davies and Davis' opinion and of the claim made by complainants than as I stated Ernest Saladin and Augusta Iselin had.

15 Q. State, if you know, whether or not the said Ernest Saladin and Augusta Iselin became parties to the scheme of reorganization and compromise of 1876, by which the creditors of the said Mobile & 36
Ohio R. R. Co. transferred their claims and securities to a committee of which Wm. H. Kays was chairman, and, if so, whether they transferred said substitution bonds to said committee, and afterwards received new bonds of said company in lieu thereof?

37 A. I know they did so.

ADRIAN ISELIN.

Subscribed and sworn to before me, this 19th day of April, 1880.

WILLIAM H. DELANCEY,
*Notary Public*,
Westchester County,
[L.S.] Acting in New York under and by virtue of chapter 807 of the Laws of 1873 of the State of
38 New York.

## Certificate.

UNITED STATES OF AMERICA,
*Southern District of New York*,
State and County of New York. } ss.:

I, WILLIAM H. DELANCEY, a Notary Public, in and for the State and County aforesaid, and duly commissioned and qualified under the laws of the
39 United States to take depositions for use in the Circuit Courts of the United States, do hereby certify that the reason for taking the foregoing deposition is, and the fact is that the testimony of the said witness is material and necessary for the respondents in the cause in the caption of said deposition named, and that the said witness lives, and did live at the time of taking said deposition in the City and County of New York, the same being at a greater distance than one hundred miles from the
40 City of Memphis, where the Court, at which it is expected the said cause will be tried, was appointed to be held, to-wit: more than five hundred miles therefrom.

I further certify that the said witness was examined and cross-examined by the counsel for the respective parties to the cause named in the caption hereto.

I further certify that on the 16th day of April, A. 41
D. 1880, I was attended at my office, No. 52 Broadway, in the City, County and State of New York, in the Southern District of New York aforesaid by L. E. Wright, Esq., solicitor, and of counsel for the respondents, E. L. Andrews, Esq., solicitor and of counsel for complainant, and by Adrian Iselin, the witness, who was of sound mind and of lawful age, and the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the de- 42
position was by me reduced to writing in the presence of the witness and from his statements, and after carefully reading the same to witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of annexing the several Exhibits, and of sealing up and directing the same with this certificate of the reasons aforesaid for taking the said deposition, with my own hand, to the Court for which the same was taken. 43

And I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In witness whereof, I have hereunto set my hand and seal this 19th day of April, in the year of our Lord, one thousand eight hundred and eighty, and of the Independence 44
of the United States the one hundred and fourth.

WILLIAM H. DELANCEY,

[L. S.] *Notary Public*,
Westchester County.

Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

45 RESPONDENTS' EXHIBIT No. 1.
W. H. D. L., N. P.

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## MORTGAGE IN TENNESSEE.

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RESOLUTIONS

46 OF

MOBILE AND OHIO RAILROAD COMPANY.

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At a called meeting of the Board of Directors of the Mobile and Ohio Railroad Company, held 25th May, 1871, the following preamble and resolutions were unanimously adopted:

*Whereas*, At sundry times, heretofore, to enable
47 this Corporation to iron, equip and complete its line of railway through the State of Tennessee, said State of Tennessee, under and by virtue of its general Internal Improvement Laws, and of other Acts amendatory and supplementary thereto, theretofore passed, and then in full force, loaned to this Company, or has advanced for its benefit, bonds of the said State of Tennessee, to the aggregate sum of one million six hundred and eighty-four thousand eight hundred dollars ($1,684,800.)

48 Whereof payment, both of principal and accruing interest, was to be made by this Company, as the same matured, and for the security of which, payments of principal and interest, a lien was reserved to said State upon the entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the Company, as incident to, or necessary for its business; and all depots and depot stations, and all the property and assets at-

tached thereto, or belonging to said Company, lying within the limits of said State, with power to seize, and in default of payment of the principal, to sell in the nature of a mortgage lien, as appears by reference to the said Statutes of the State of Tennessee.

*And Whereas*, By Act of the said State of Tennessee, Chapter xxxviii., passed at the second session of the thirty-fifth General Assembly of the State, entitled, "An Act to liquidate the State Debt contracted in aid of Railroad Companies in the State of Tennessee," passed February 25, 1869, it is among other things enacted, that any person or corporation may, with the consent of the Board of Directors of any Railroad Company, so having received aid under said General Internal Improvement Law, passed 11th February, 1852, and the amendments thereto, pay off the indebtedness of such Railroad Company, to the said State, in the mode and manner therein provided, and with the consent of such Railroad Company upon such payment be subrogated to all the lien or liens, which the State of Tennessee had, or has, upon said Railroad, or its property, and have the same right to enforce the same, which the State of Tennessee had.

*And Whereas*, This Corporation is desirous to avail itself of the provisions of said law, and return to said State of Tennessee the like amount of bonds of said State, as have heretofore been loaned to it, or advanced for its benefits, by an issue of its own bonds, to be exchanged for said State bonds, with the holders thereof, and at the same time to secure to the holders of said substituted bonds in good faith all the protection and security which the said State of Tennessee held for its protection and indemnity against loss and damage, by reason of its said loan to the said Mobile and Ohio Railroad Company, by virtue of the laws of the said State, were no change made in the form of security originally

held by said State, according to the true intent and meaning of the Act passed 25th February, 1869.

*Therefore*, Be it resolved by the Board of Directors of the Mobile and Ohio Railroad Company as follows:

1st. The President of this Company is hereby authorized and empowered to cause to be prepared and issued, under the seal of this Company to the amount of one million six hundred and eighty-five thousand dollars ($1,685,000), the same to be signed by the President, or in his absence, by one of the Vice-Presidents, and countersigned by the Secretary and Treasurer, said bonds to be made payable in Gold coin of the United States, in the City of New York, or in the City of London, at the option of the holder; to be each for the sum of one thousand dollars, or two hundred and five pounds Sterling, and payable on the 1st day of July A. D. 1901. Said bonds to bear interest at seven per centum per annum, payable semi-annually, or 1st January and July in each year, at New York or London, at the option of the holder, and for which interest, coupons or interest warrants are to be attached to said bonds.

2d. That Wm. Butler Duncan, Adrian Iselin, and Richard T. Wilson, their survivors and survivor, are hereby declared the Agents of this Company, to effect the substitution of its said bonds, as above authorized, in place of the said bonds of the State of Tennessee, for the purposes and objects declared in the preamble to these resolutions; and upon and from and after such substitution, and as rapidly as the same is effected, the said Wm. Butler Duncan, Adrian Iselin, and Richard T. Wilson, their survivors and survivor, and their successors, are hereby declared to be Trustees for the mutual benefit of this Company, and of the holders of said bonds, and are hereby authorized to defend and

protect the rights conferred on the holders of said 57
bonds by the said acts and laws of the said State of Tennessee, and hereby acknowledged and recognized. In case of the death or resignation of any of said Trustees, the vacancy shall be filled by the joint appointment of the remaining Trustees or Trustee, and the President of the Mobile and Ohio Railroad Company, with the approval of its Board of Directors; and if all become incapable of acting, new Trustees are to be appointed by this Company. 58

3d. This Company does hereby declare that it does and will at all times acknowledge and recognize the bonds herein authorized to be issued, when so substituted in the room and place of the said bonds of the State of Tennessee in manner herein and by said act provided, as entitled to, and in fact being a lien, in the nature of a first mortgage, upon all the property of this Company, in the said State, the same precisely as is now declared to exist in 59
favor of the said State of Tennessee, under and by virtue of the Statutes thereof, in pursuance of which the said loan and advance of State bonds was made to the Company.

And this Company does hereby covenant to and with the said Trustees, their survivors and survivor and successors, that it will in good faith do and perform all things, acts and deeds necessary and proper, and which it may be reasonably requested to do, for the protection of the rights of the holders 60
of said substituted bonds, and of said Trustees for their benefit, according to the true intent and meaning of the said acts and laws of the State of Tennessee, hereinbefore referred to, and of these resolutions; and further, that this Company shall and will, annually hereafter, from and after the first day of April, 1873, within three months thereafter,

and during each year, while said bonds, herein authorized, are running to maturity, provide and set apart from earnings of the Company a fund of at least one per centum of the amount of said bonds, and will annually faithfully apply said sums of money, so set apart, as a sinking fund to the purchase and gradual retirement of said bonds; and on or by the 1st day of April, 1874, and every year thereafter, till said bonds are fully retired, will furnish to said Trustees, evidence of the performance of this stipulation, as may be agreed on.

*Resolved*, That the President of this Company be, and he is hereby directed, under its corporate seal, to execute and deliver to said Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, as Trustees aforesaid, its deed for the uses and purposes herein declared and for the effectual protection and security of the holders of the bonds, hereby authorized to be issued, according to the true intent and meaning of these resolutions.

I certify the foregoing to be a true copy from the Minutes of the Board of Directors of the Mobile and Ohio Railroad Company.

(Signed)

{ Seal of the Comp'y }

A. L. WILLOUGHBY,
Secretary M. & O. R. R. Co.

RESPONDENT'S EXHIBIT NO. 2. 65

W. H. D. L., N. P.

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# DEED OF TRUST

OF

# MOBILE AND OHIO RAILROA COMPANY.

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66

THIS INDENTURE, made this first day of July, A. D. 1871, between the Mobile and Ohio Railroad Company, of the first part, Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, of the City and State of New York, their survivors and survivor, and successors, of the second part, and the holders of the bonds issued by said party of the first part, and herein described, of the third part,

*Witnesseth*, That whereas, under the General 67
Internal Improvement Laws of the State of Tennessee, passed 11th February, 1852, and the Acts amendatory thereto, the party of the first part has become liable to the State of Tennessee in the sum of one million six hundred and eighty-four thousand eight hundred dollars, being the amount of bonds of said State loaned to said party of the first part, and moreover is under obligation to pay to the State of Tennessee semi-annually an amount equal to the amount of the same annual interest 68
upon the said bonds so loaned, as well as an amount of money equal to the principal of said bonds, so loaned to the party of the first part, when and as the same become due and payable; and, whereas, by Act of the said State of Tennessee, entitled, "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee,"

69 passed February 25th, 1869, the railroad companies, so receiving aid from the State, of which the party of the first part was one, are authorized to issue their own bonds to an amount equal to the bonds so received from said State, and are authorized so to use said bonds to retire and return to said State, bonds of said State of Tennessee to an amount equal to that loaned to said company, or advanced for its benefit; for the security of which new issue of bonds, the holders thereof, it is by said Act de-
70 clared, shall, with the conssnt of such railroad company, be entitled to the lien, rights and privileges reserved to the said State for its own security and protection.

*And Whereas*, The party of the first part has accepted the terms and provisions of said Act, and has for the purpose aforesaid caused to be issued bonds, dated 1st July, 1871, to the extent of one million six hundred and eighty-five thousand dollars, and numbered from one to sixteen hundred
71 and eighty-five (1685), inclusive, each for one thousand dollars, payable in gold coin of the United States, at New York, or two hundred and five Pounds Sterling, payable in London, at the option of the holder, with interest at seven per centum per annum, payable semi-annually, in gold coin, at New York, or in Sterling, at London, as aforesaid, at the option of the holder, for which interest Coupons or Warrants, payable as aforesaid, are attached to said bonds; and has delivered said
72 bonds with the said Coupons attached to Wm. Butler Duncan, and Adrian Iselin, and Richard T. Wilson, as agents of the party of the first part, to be substituted in place of the claim and demand and liability now held against the party of the first part by the said State of Tennessee, for which purpose of substitution the said Wm. Butler Duncan, Adrian Iselin, and Richard T. Wilson are hereby

made and appointed the agents of the said party of 73
the first part, and which substitution under said agency, said parties of the second part are proceeding to make and perfect.

*And Whereas*, Under the laws of the said State of Tennessee, the said State has a lien upon the following named property of this State, to wit: The entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the 74
company as incident to or necessary for its business, and all depot stations, and all the property and assets attached thereto, or belonging to said Company, within the State of Tennessee, which under the said Act of 1869 upon the return of said State bonds to the said State of Tennessee by any person or corporation, with the consent of such indebted Railroad Corporation, shall enure to the benefit and for the security of the person or corporation so paying off the said indebtedness, or 75
liability, of such corporation to the State, or returning to it its said bonds

*Now Then Know all Men by These Presents*, That in consideration of the premises, and of the sum of Five Dollars to said party of the first part paid by the said parties of the second part, and to make good and secure the rights of the holders of the said bonds herein described; and now issued by the party of the first part, and who are in fact the payers of the said indebtedness of the said party of 76
the first part to the State of Tennessee, within the meaning of said Act of February 25th, 1869, and to the extent thereby authorized, the said party of the first part doth hereby consent that the said parties of the second part shall pay and satisfy to the said State of Tennessee the debt and liability due by the said party of the first part to the said State, and

77 doth hereby approve such payment, and doth also hereby consent that upon the payment aforesaid being made, or to the extent that it shall be made, and as it is, or may be, from time to time made, said parties of the second part shall, in pursuance of the terms and provisions of the Act last above herein referred to, be vested with and shall have and hold all the lien or liens which the State of Tennessee had or has upon the preperty of the said party of the first part, hereinbefore described, in
78 the State of Tennessee, and shall have the same right to enforce the same, which the State of Tennessee had, and that said parties of the second part shall be, and are hereby, placed in the same position and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same. To Have and to Hold the rights, powers and privileges hereby consented to, and which arise under the said Act of the State of Tennessee with the consent and appro-
79 val of the said Mobile and Ohio Railroad Company to them, the said parties of the second part, their survivors and survivor, and their successors, upon trust, however, for the use, benefit, advantage and security of the holders of the bonds herein described, issued by the said Mobile and Ohio Railroad Company, parties of the third part, to these presents, and their assigns, and it is hereby declared, that in case of the death or resignation of the said parties of the second part, the said party of the first part shall
80 appoint new Trustees in their place and stead ; and in case any one or two of said trustees die or resign such vacancy shall be filled by the joint appointments of the remaining Trustee, or Trustees, and the President of the Mobile and Ohio Railroad Company, with the approval for the Board of Directors thereof. And the said party of the first part doth agree and covenant to and with the said

parties of the second part, their survivors and sur- 81
vivor, and their successors, that it, the said party
of the first part, will in good faith and at all times
hereafter do and perform all things necessary and
proper for the protection and security of the said
parties of the third part, and of the second part,
and their assigns, as the same may be reasonably
required of it, to make good and effectual this lien
and security of said parties, about the payment of
their said debts and demands, and to secure the en-
forcement of their remedies of the payment of said 82
bonds and the interest accruing thereon, in case de-
fault be made in the payment of said bonds and
coupons, or any part or portion thereof, or default
be made in the performance of the covenant herein
contained, providing for the creation and applica-
tion of a sinking fund for the gradual retirement of
the bonds herein described, according to true in-
tent and meaning of these presents, and of the said
Acts hereinbefore referred to, of the General Assem-
bly of the State of Tennessee. And the said party 83
of the first part doth further covenant to and with
the said parties of the second part, and of the third
part hereto, and their assigns, that on the first day
of April, 1873, and on the first day of April of each
thereafter, said party of the first part will from the
net earnings of said road set aside an amount equal
to one per centum of the amount of bonds issued
and outstanding under the provisions hereof, as a
Sinking Fund for the redemption of the bonds se-
cured by these presents, and that it will invest said 84
Sinking Fund, and the interest accruing thereon, in
the purchase of the bonds herein secured, at a rate
not exceeding ten per centum above par, and accrued
interest; the bonds so purchased shall be immedi-
ately registered, stamped and endorsed, as irrevo-
cably belonging to said Sinking Fund, and not
further transferable, and said bonds and coupons so

purchased and assigned to the Sinking Fund by such registration, stamping and endorsement, shall be forever void and cancelled for all other purposes. In case bonds hereby secured cannot be purchased at or under the rate above named, within three months after the setting apart of such money for account of said Sinking Fund, then such other good securities as may be agreed on by the parties of the first and second part shall be purchased and assigned to said Sinking Fund, and all such securities shall be placed with such Depository and in such manner as said parties of the first and second part may from time to time agree upon; and the interest accuing upon said Sinking Fund shall be collected by the party of the first part, and invested as herein provided; and all securities assigned to or purchased for said Sinking Fund shall be, and hereby are, irrevocably pledged for the security and ultimate redemption of the principal and interest of the bonds hereinbefore described and issued by the said party of the first part for the uses and purposes herein declared. And the said parties of the second part are hereby released from executing the bond required of Trustees under Section 1974 of the Code of Tennessee. And the said parties of the second part do hereby accept the Agency and Trusts herein and hereby imposed upon them, and do promise and agree faithfully and to the best of their ability to perform the duties hereby provided to be done and performed by them.

It is understood that the Acts of any two of the said Trustees hereunder shall be valid and effectual in the performance of the duties hereby declared, the same as if all had joined therein; that said Trustees may in all cases act by an Agent duly appointed over their hand and seal, except in such matters as are by law required to be performed in their proper person; that they shall be fully indem-

nified and repaid by the said party of the first part, including a reasonable compensation, or out of the Trust Funds which may come into their hands, for their reasonable cash fees and expenses by them incurred about the performance of the Acts and things herein and hereby required of them; and shall not be required to act in the execution of the trust herein declared, except at their own option, unless the party or parties requesting them so to proceed shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur or be at in so doing.

*In Testimony Whereof*, The said party of the first part has hereto set its Corporate Seal and the hand of its President, by authority of a resolution of its Board of Directors duly given. And the said parties of the second part have hereunto set their hands and seals.

(Signed)

ABRAHAM MURDOCK,

Seal of the Comp'y

President Mobile and Ohio Railroad Co.

W. BUTLER DUNCAN, [L. S.]
ADRIAN ISELIN, [L. S.]
R. T. WILSON, [L. S.]

Attest:

A. L WILLOUGHBY,
Secretary and Treasurer M. & O. R. R. Co.

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STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.

On this seventh day of August, in the year of our Lord, one thousand eight hundred and seventy-one, in the City of New York and State of New York, personally appeared before me, the undersigned, George W. Colles, a Commissioner of Deeds for the State of Tennessee, resident in New York City, the within named Abraham Murdock, President of the

Mobile and Ohio Railroad Company, one of the within named bargainers, with whom I am personally acquainted, and who being first duly sworn deposes and says, that he is President of the Mobile & Ohio Railroad Company, and is acquainted with its corporate seal; that the seal purporting to be such, above affixed, is such corporate seal, and was duly affixed to the within instrument by him, the said President: and, also, he, the said President, set his hand thereto, both by authority of a resolution of the Board of Directors of said Company, duly given. And, also, then and there personally appeared William Butler Duncan, Adrian Iselin and Richard T. Wilson, others of the within named bargainers, before me, with each of whom I am personally acquainted, and who, each acknowledged, that he had executed the within instrument for the purposes therein contained.

Witness my hand and seal, the day and year first above written.

{Commisioners' Seal.}

(Signed) GEORGE W. COLLES,
Commissioner of Tennessee, in New York.

RESPONDENT'S EXHIBIT No. 3.—W. H. D. L., *N. P.*

**$1,000.** **£205.**

## UNITED STATES OF AMERICA.

FIRST MORTGAGE,
7 PER CENT.

SINKING FUND.
GOLD BOND.

## THE MOBILE AND OHIO RAILROAD COMPANY

Promises to pay to the holder of this Bond, on the first day of July, nineteen hundred and one, for value received, the sum of **ONE THOUSAND DOLLARS,** in Gold Coin of the United States of America, in the City of New York, or at his option, **TWO HUNDRED AND FIVE POUNDS** Sterling, in the City of London, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July of each year, either in Gold Coin of the United States of America in the City of New York, or in Pounds Sterling in the City of London, on delivery of the annexed interest warrant. This Bond being one of a series of Bonds of like tenor and date, numbered from 1 to 1685 inclusive, amounting in the aggregate to a sum not exceeding sixteen hundred and eighty-five thousand dollars, or three hundred and forty-five thousand four hundred and twenty-five Pounds Sterling, is substituted by consent of this Company for a like amount of its debt to the State of Tennessee, and is a First Mortgage Lien on one hundred and eighteen and one-half miles of said railroad, and all franchises and all other property of said Railroad Company within the limits of the State of Tennessee, and is entitled to the benefit of a sinking fund as set forth in the deed of trust to W. B. Duncan, A. Iselin, and R. T. Wilson. This Bond shall not become obligatory upon the Company until the Certificate endorsed hereon is signed by the Trustees.

REVENUE STAMP, FIVE CENTS.

In Witness Whereof, The said Mobile and Ohio Railroad Company has caused this Bond to be signed by its President and Secretary, and its Corporate Seal to be hereunto affixed at the City of Mobile, Alabama, the first day of July, anno domini one thousand eight hundred and seventy-one.

SEAL
M.&O.R.R.CO.

I certify that W. B. Duncan, A. Iselin and R. T. Wilson, Trustees, by consent of the Mobile and Ohio Railroad Company, have substituted this Bond for the same indebtedness of said Company to the State of Tennessee, which indebtedness has been paid in full, and that this Bond is issued under authority of law, and takes the place of and is secured by the lien held by said State, being a first mortgage on that portion of the Mobile and Ohio Railroad within the limits of said State.

REVENUE ONE DOLLAR STAMP.

(Signed) E. R. PENNBAKER,
Comptroller of the State of Tennessee.

By Wm. Morrow, Agent.

ABM. MURDOCK, President.
A. L. WILLOUGHBY, Secretary.

100 99 98 97

25

255

104

**$35.** **£7, 3s, 6d.**

THE MOBILE & OHIO RAILROAD COMPANY

WILL PAY BEARER

On first day of June, 1881,

As he may elect, thirty-five dollars in United States Gold Coin, in the City of New York, or seven pounds, three shillings and sixpence sterling, in the City of London, for six months interest on Bond No. ——.

A. L. WILLOUGHBY,
*Secretary.*

103

FIRST MORTGAGE

SEVEN PER CENT.

SINKING FUND GOLD BOND.

MOBILE & OHIO RAILROAD COMPANY.

**$1,000,**

OR

**£205.**

PRINCIPAL

Due 1st July, 1901.

INTEREST

Payable 1st July and 1st January.

102

This Bond may be registered in the owner's name on the Company's Books, such registry being noted on the Bond by the Company's Transfer Agent, after which no transfer shall be valid unless made on the Company's Books by the registered owner, and similarly noted on the Bond; but the same may be discharged from registry by being transferred to bearer, after which it shall be transferrable by delivery, but it may be again registered as before. The registry of the Bond as above shall not restrain the negotiability of the Coupons by delivery.

101

26

TRUSTEE'S CERTIFICATE.

We certify that this Bond is one of a series not exceeding sixteen hundred and eighty-five thousand dollars, or three hundred and forty-five thousand four hundred and twenty-five pounds sterling, substituted by us by consent of the Mobile and Ohio Railroad Company, for a like amount of the said Company's indebtedness to the State of Tennessee.

R. T. WILSON,
W. BUTLER DUNCAN,
ADRIAN ISELIN,
*Trustees.*

RESPONDENT'S EXHIBIT No. 4.

W. H. D. L., N. P.

EMPRUNT 7% OR.

*Première Hypothèque*

DU

**CHEMIN DE FER MOBILE ET OHIO**

EMISSION DE DOLL. 1,685,000

En 1,685 Obligations au Porteur de Doll. 1,000 or ou Liv. Stl. 205.

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Intérêt **7** % payable par semestres 1er Janvier 1er Juillet en **35** Dollars or à New-York, ou en Liv. stg. 7. 3½ s. à Londres, à l'Union Bank, au choix des porteurs.

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Remboursement au pair, soit en Doll. or 1,000, en Liv. stg 205, au plus tard en 1901

Toutefois, la Compagnie doit, à partir de 1873, former un fonds d'amortissement au moyen d'un prélèvement annuel de 1% du montant nominal de l'Emprunt, et elle est tenue de procéder a l'amortissement par voie de rachat des Oligations, aussi longtempts qu'elle peut le faire a 110% ou au-dessous. A défaut, le fonds d'amortissement doit être placé en valeurs de premier ordre, dont le produit sera appliqué au remboursement des Obligations a l'échéance.

Le chemin Mobile et Ohio, d'une longuer totale de 507 miles anglais, entièrement achevés, commence a

109 Mobile, sur le Golfe du Mexique traverse les Etats d'Alabama, Mississippi, Tennessee et Kentucky, et aboutit a Columbus et Cairo, sur le Mississippi, ou il se relie aux deux grandes lignes du St.-Louis et Iron Mountain, et de l'Illinois Central, formant ainsi une artére directe et presque rectiligne entre les principaux ports du Sud, en particulier la Nouvelle-Orléans et Mobile d'une part, et les grandes cités de l'Ouest, St-Louis, Chicago, d'autre part. Cette Compagnie, déja ancienne, et qui compte parmi les
110 plus importantes des Etats du Sud, a été depuis l'origine dans les mains les plus honorables. Fort éprouvée par la guerre de sécession, ainsi que la plupart des enterprises situées dans le Sud, elle a depuis lors surmonte entièrement ses difficultes financieres, remis sa ligne en bon ordre, et ses efforts tendent maintenant a developper ses resources pour mettre son materiel au niveau de l'accroissement constant de son trafic.

L'emission actuelle ne constitue point une charge
111 nouvelle pour la Compagnie. C'est une simple operation financiere, advantageuse pour elle, et destinee a lui fournir les ressources necessaires au developpement croissant de son trafic.

En effet, cet Emprunt de Doll. 1,685,000 est emis en remboursement et en remplacement d'un montant egal d'avances, que l'Etat de Tennessee avait faites primitivement a la Compagnie pour aider a la construction de sa ligne. Comme tel, le dit Emprunt est substitute par la Loi a tous les droits de l'Etat
112 et, notamment, il est garanti par une premiere hypotheque sur les 118 miles de la route, situes dans les limites de l'Etat de Tennessee. Chaque Obligation porte a cet effet un certificat des autorites de l'Etat de Tennessee, constatant que l'Etat a bien ete rembourse integralement, que la dite Obligation est emise en lieu et place d'un montant egal, precedemment du a l'Etat, et qu'elle est garantie par

l'hypotheque qui existait en faveur de l'Etat, avant 113
le remboursement de ses avances.

MM. W.-B. Duncan, Shermann & C^e^), Adrien Iselin (de A. Iselin & C^e^) et R.-T. Wilson sont les Trustees (fidei-commissaires), charges d'exercer les droits que l'Etat de Tennessee a transmis aux detenteurs de ces Obligations. Ces droits permettent la prise de possession immediate du chemin, dans le cas du moindre delai dans le paiement des interets ou du capital, et ont ete exerces a plusieurs reprises, sans aucune contestation, contre d'autres 114
chemins de fer qui n'avaient pas paye les interets qu'ils devaient a l'Etat. Ces droits ont ete reconnus de la maniere la plus formelle, tant par la Compagnie Mobile et Ohio que par ses autres creanciers.

Ces Obligations forment une charge minime en capital, de Doll. 14,271 par mile, ou en interet, de Doll. 1,000 sur les 118 miles, de l'Etat de Tennessee. Or, le revenu moyen de la ligne entiere pour 1870 atteint Doll. 5,000, ou (deduction faite des frais a raison de 60%) Doll. 2,000 net par mille, soit le 115
double du montant reclame pour le service de la susdite dette. Il convient d' ajouter que les 118 miles, specialement affectes al a presente hypotheque, constituent la partie la plus productive de la route ; les recettes y afferentes sont donc plus fortes que la moyenne, et susceptibles, d'ailleurs, d'une augmentation considerable.

En resume, ces Obligations, reposant sur une ligne entierement achevee et en voie de prosperite ascendante, sont garanties par un gage exceptionnel et 116
par un revenu plus que suffisant qui tend a s'accroitre rapidement. Elles se recommandent de plus par la stipulation du capital et des interets payables en livres sterling, a Londres, a l'Union Bank.

*New-York*, Octobre, 1871.

A. ISELIN & C^ie^.

117 La souscription aux susdits Doll. 1,685,000, 7% or Mobile et Ohio, Obligations premiere hypotheque, est ouverte :

Les Lundi 13 et Mardi 14 Novembre prochain

a Francfort $^{S}/_{M}$ : au Frankfurter Bankverein ;
a Berlin : au Berliner Bankverein ;
a Stuttgart : chez MM. Pflaum & C$^{e}$ ;
a Breme : chez MM. J. Schultze & Wolde ;
a Munich : chez M. Jos. de Hirsch ;
118 a Bruxelles et Anvers : } a la succursale de la Banque de Credit et de Depot des Pays-Bas ;
a Bale : chez MM. de Speyr & C$^{e}$ ;
a Geneve : chez MM. Lombard, Odier & C$^{e}$ ;
)) )) )) A. Cheneviere & C$^{e}$ ;
)) et a la succursale de la Banque de Credit et de Depot des Pays-Bas.

Prix d'emission a Geneve pour l'Obligation, jouissance du 1$^{er}$ Juillet dernier, Fr. 4670, payables apres
119 la repartition at au plus hard le 30 Novembre courant, contre remise d'un recepisse provisoire.

Au cas ou les souscriptions depasseraient le montant offert, elles subiraient une reduction proportionelle.

La livraison des titres definitifs aura lieu le plus tot possible, probablement avant la fin de Decembre prochain.

120

RESPONDENTS EXHIBIT NO 5, W. H. D. L., N. P. 121

**Translation.**

7% First Mortgage Gold Loan of the Mobile & Ohio Railroad Company.

Issue $1,685,000, in 1685 bonds to bearer of $1,000 Gold or £ 205.

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Interest 7% payable semi annually 1st January 122
and July, at $35 gold, in New York, or £ 7, 3, 6, in London, at the Union Bank, at the option of the holder.

Principal reimbursable at par, either in $1,000 gold or £205, not later than 1901.

Commencing with 1873, the Company is obliged to set aside a sinking fund equal to 1% of the amount of the loan, which money is to be invested in buying bonds of this loan, as long as they can be had at 110 or under. In case they cannot be bought 123
at this limit, the amount to the credit of the sinking fund is to be invested in first class securities, the proceeds of which are to be applied to the payment of the loan, at maturity.

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The Mobile & Ohio Railroad is 507 (English) miles long, entirely completed, commencing at Mobile, in the Gulf of Mexico, crossing the States of Alabama, Mississippi, Tennessee and Kentucky, and end- 124
ing at Columbus and Cairo, on the Mississippi, where it connects with the two important lines of the St. Louis & Iron Mountain and Illinois Central, thus forming a direct artery and almost straight line between the principal ports of the South, particularly New Orleans and Mobile, and the cities of the West, St. Louis and Chicago.

125 This Company already old and considered one of the most important in the Southern States has, since its origin, been under the control of most respectable parties. As with other enterprises in the South, the Company had a very hard time during the war of the rebellion ; since which it has satisfactorily arranged its financial difficulties, reconstructed its road, and is now endeavoring to develop its resources by improving the conditions of its equipment, so as to place it in a position to meet
126 the constantly increasing traffic offering.

The present issue is no new charge on the resources of the Company. It is simply an advantageous financial operation, the profit arising from which furnishing the Company with the means necessary to develop its increasing business. In fact this loan $1,685,000 is issued to reimburse and replace an equal amount of advances, which the State of Tennessee had originally made the Company to assist in the construction of the road.

127 As such, the said loan is substituted by law to all the rights the State had and is especially secured by a first mortgage on the 118 miles of road situated within the limits of the State of Tennessee. Each bond bears a certificate from the authorities of the State of Tennessee, stating that the State has been paid in full ; that the said bond is issued instead and place of an equal amount formerly due the State, and that it is secured by the mortgage which existed in favor of the State prior to the reimburse-
128 ment of its advances.

Mess. W. B. Duncan (of Duncan, Sherman & Co.), Adrian Iselin (of A. Iselin & Co.), and R. T. Wilson, are the trustees entrusted with exercising the rights which the State of Tennessee has transferred to the holders of the bonds. These rights permit the taking possession of the road, in the event of the slightest delay in the payment of the interest

or principal, and have several times been enforced, 129
without contest, against other roads, which had not paid the interest they owed the State. These rights have been acknowledged in the most formal manner, as well by the Mobile & Ohio Railroad Company, as by its other creditors.

These bonds constitute the small charge $14,271, principal, or $1,000 interest per mile on the 118 miles in the State of Tennessee.

The receipts of the whole road for 1870 were at the rate of $5,000 gross, or (deducting expenses at 130
the rate of 60%), $2,000 net per mile, viz: double the amount necessary for the payment of the interest on the above mentioned bonds. We can also add that the 118 miles which are covered by the present mortgage, are the most productive part of the property; the receipts on them being heavier than the average of the whole road and are susceptible of increasing considerably.

In short, these bonds issued on an entirely completed road of increasing prosperity, are secured by 131
a lien of exceptional value, and by an income more than sufficient, and which tends to increase rapidly. They can further be recommended on account of the stipulation that the principal and interest are payable in sterling, at the Union Bank of London.

New York, October, 1871.

Signed, A. ISELIN & CO.

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132

Subscription to the above mentioned $1,685,000 7% Gold bonds of the Mobile & Ohio Railroad, will be received Monday and Tuesday next (November 13th and 14th).

At Frankfort on Me., at the Frankfewter Bankverein.

At Berlin, at the Berliner Bankverein.

133 At Stuttgart, with Mess. Pflaum & Co.
At Bremen, with Mess. Schultze & Wolde.
At Munich, with Jas. Von Hirsch, Esq.
At Brussells, and Antwerp, at the Branch office of the Bank of Paris and Pays Bas.
At Basel, with Mess Von Speyer & Co.
At Genevea, with Mess. Lombard, Odier & Co.
" " " " A. Cheneviere & Co.
" " at the branch office of the Bank of Paris and Pays Bas.

134 Price for a bond carrying interest from July 1st last frs. 4670, at Geneva, payable after the allottment, but not later than November 30, agaiust a provisional receipt.

In case the subscriptions exceed the amount of bonds offered, they will be reduced proportionately.

The delivery of the bonds themselves will be made as soon as possible, probably before the end of next December.

135 ———

RESPONDENT'S EXHIBIT, No. 6.
W. H. D. L., N. P.

December 31, 1870.

FINANCIAL.

SEVEN PER CENT. FIRST MORTGAGE BONDS

OF THE

136 NASHVILLE & DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile, on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

This mortgage was created for the sole purpose of 137
paying a debt due to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow to abide settlement of a claim of the United States; $300,000 have been purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence. 138

DREXEL, WINTHROP & CO.,
18 Wall Street.

NEW YORK GUARANTY AND INDEMNITY CO.,
52 Broadway and Exchange Court.

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## NASHVILLE & DECATUR RAILROAD CO.

FIRST MORTGAGE

139

*Seven per cent. Sinking Fund Bonds,*

Redeemable 1st July, 1900,

INTEREST PAYABLE 1ST JANUARY AND 1ST JULY IN THE CITY OF NEW YORK.

The Nashville & Decatur Railroad is 120 miles long, running in a direct line between Nashville and Decatur.

The country from Nashville to Decatur through 140
which the road passes, is the richest and most fertile part of Tennessee and Alabama, and it is doubtful if any road of similar length in the United States traverses a finer region.

The business of the road is at present almost exclusively local, but upon the completion of the South and North Alabama R. R., 110 miles of which

141 is already finished, it will become an important link in the most direct route from Louisville and other great cities of the Northwest to Montgomery, Mobile Pensacola and important points on the Gulf, and in the interior of Georgia and Alabama, and will derive from this source, a large additional business.

The security of the bonds now offered, does not, however, depend on any future increase of the business of the Nashville & Decatur R. R. Its receipts are already, under the present unfavorable condi-
142 tions, sufficient to secure beyond doubt the punctual payment of the interest on these bonds.

The mortgage is for $2,100,000, being $17,500 per mile, and has been created for the sole purpose of paying off the debt due the State of Tennessee, amounting to $2,702,997.10.

The proceeds of $1,900,000 of the bonds, now offered for sale, and other assets of the company on hand, will pay the entire State debt and leave its liabilities diminished by about $600,000, and with
143 $200,000 of its bonds on hand. These $200,000 of bonds are by special agreement placed in the hands of the New York Guaranty and Indemnity Co., in escrow until the suit now pending between the United States and the company is decided. The claim of the Government is for rolling stock sold to the company after the war, and now amounts, principal and interest, to $247,855.16. The company has a counter-claim for a much larger amount for material and rolling stock voluntarily delivered to the gov-
144 ernment during the war, and there seems to be no doubt that the claim of the government will not be admitted by the courts except as an offset.

The debt which the road owed to the State of Tennessee has been paid in full, as will appear by the annexed Statement of P. C. Calhoun, President of the Fourth National Bank, agent for the State Comptroller. On each bond there is a certificate,

signed by the Comptroller, stating that the debt 145
due by the Nashville and Decatur Railroad to the State of Tennessee has been paid in full, and that the bond is secured by a first mortgage, taking the place of the State lien. The bonds are further secured by a deed of trust, made by P. C. Calhoun, Richard T. Wilson and Adrian Iselin, which provides for a sinking fund of one per cent. per annum, to commence April 1st, 1873, the proceeds of which the company is obliged to invest in the purchase of the bonds as long as they can be obtained at 110 or 146
under.

| | |
|---|---|
| The gross receipts of the road for the fiscal year ending Sept. 30th, 1869, were . . | $479,316 70 |
| Expenses . . . . | 271,383 36 |
| Leaving the net earnings, | $207,933 34 |

Owing to the short crops and extraordinary expenses, the result of the business for the year end- 147
ing Sept. 30th, 1870, has been less favorable.

| | |
|---|---|
| The gross receipts were . | $463,352 50 |
| Expenses, . . . . | 298,505 44 |
| Leaving the net earnings, . | 164,847 06 |

From present appearances the receipts for the current year will show a large increase, and after the completion of the South and North Alabama Railroad, it is confidently expected that they will 148
at least double.

J. W. SLOSS,
*President Nashville & Decatur Railroad Co.*

The undersigned offer the above bonds for sale on favorable terms, and after a thorough examination, believe the accompanying statement to be correct,

149 and can confidently recommend the bonds to investors as a first-class security.

DREXEL, WINTHROP & CO.,
18 Wall Street, New York.

NEW YORK GUARANTY & INDEMNITY CO.,
52 Broadway and Exchange Court, New York.

January, 1871.

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150 FOURTH NATIONAL BANK, City of New York, Agency of the Comptroller of the State of Tennessee.

NEW YORK, January 2d, 1871.

STATEMENT.

Debt of the Nashville & Decatur Railroad Company, as per statement, due State, January 1st, 1871, . . . $2,702,997 10

CREDIT.

151 I hereby acknowledge to have received from the Nashville and Decatur Railroad Company, the following number of bonds and coupons of the State of Tennessee, in liquidation of said debt due to the State, January 1st, 1871, viz.:

| | |
|---|---|
| Twenty-three hundred and ninety-two 6% State bonds, of 1,000 each . | $2,392,000 00 |
| Two 5% State bonds, $1,000 each . | 2,000 00 |
| One " " " . | 1,750 00 |
| Interest due on 5% State bonds, . | 1,125 00 |
| 152 Ten thousand two hundred and four, past-due State coupons, of $30 each | 306,120 00 |
| Currency, . . . . . | 2 10 |
| | 2,702,997 10 |

(Signed),

P. C. CALHOUN,
*President,*
*Agent of the Comptroller of the State of Tennessee.*

RESPONDENT'S EXHIBIT, NO. 7. 153

W. H. D. L., N. P.

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FINANCIAL.

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EAST TENNESSEE
VIRGINIA AND GEORGIA RAILROAD
154

FIRST MORTGAGE 7 PER CENT. BONDS, REDEEMABLE 1900.

Interest payable 1st of January and 1st of July in the City of New York.

The mortgage is for $3,500,000, on a road 270 miles long, which has been in successful operation for many years. The lien is about $13,000 per mile, which makes it, with few exceptions, the smallest 155
issued on any road in the United States. It was created for the sole purpose of paying off the debt due the State of Tennessee, amounting to $4,117,-761.10.

An examination into this security will prove it to be one of the best ever offered to this market.

For terms and further particulars apply to

GALLATIN NATIONAL BANK,
No. 36 Wall Street,
Agent for the sale of the bonds. 156

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270



# 157 EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD

FIRST MORTGAGE

## SEVEN PER CENT. BONDS,

REDEEMABLE 1900,

Interest Payable 1st January and 1st July, in the City of New York.

158

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The East Tennessee, Virginia & Georgia Railroad is 270 miles long; it commences at Bristol, on the boundary of Virginia, and runs to Chattanooga, with a branch from Cleveland to Dalton, Georgia, thirty miles long.

It forms a link to the shortest line which can be built from New York to New Orleans, and, from
159 the conformation of the country through which it runs, must necessarily remain a Trunk Line, the importance of which will increase as fast as the numerous railroads now connected with it are completed.

The security of the Bonds now offered for sale does not, however, depend upon any future development of the business of the road. The earnings are already sufficiently large to establish the perfect
160 safety of the Bonds, and to make them one of the best securities ever offered in our market.

The mortgage is for $3,500,000, being only $13,000 a mile, and has been created for the sole purpose of paying off the debt due to the State of Tennessee, amounting to $4,117,761.10. The road is entirely completed; the bridges burned during the war have all been rebuilt in the most substantial manner;

the surplus earnings are sufficient to re-lay the track with new iron, which is now being done rapidly, and to make the other improvements which the increasing business of the road requires, without incurring any new debt. It was solely for the purpose of realizing the profit which would result from the payment of the debt of the State of Tennessee that this mortgage was created. 161

The proceeds of $2,500,000 of the bonds, together with the money the Company had on hand, will pay the entire State debt, amounting to $4,117,761.10, and leaving the Company without any floating liability, its debt diminished by $671,761.10, and with one million of bonds on hand. Of these, $500,000 are by special agreement, not to be issued by the trustees of the mortgage until the suit now pending between the United States and the Company is decided. The claim of the Government is for rolling stock sold to the Company after the war, and now amounts to $560,000. The Company has a counter claim for a much larger amount for material and rolling stock voluntarily delivered to the Government at the outbreak of the war, and there seems to be no doubt that the claim of the Government will not be admitted by the Courts. Should it, however, be otherwise, the $500,000 of Reserved Bonds will be sufficient to pay claim without embarrassing the Company in any way. 162 63

Of the $2,500,000 which the Company proposed to sell, $1,400,000 have already been sold, mostly in Europe, where they would all have been absorbed, had it not been for the breaking out of the war; there remained, therefore, $1,100,000 to be sold, which are offered at 90 and interest. 164

The debt which the Road owed to the State has been paid in full, as will appear by the Statement

165 of the Comptroller, a copy of which appears annexed. On each bond there is a certificate, signed by the Comptroller, stating that the debt due by the East Tennessee, Virginia & Georgia Railroad of the State of Tennessee has been paid in full, and that the bond is secured by a first mortgage, taking the place of the State lien. The bonds are further secured by deed of trust, made to P. C. Calhoun, Adrian Iselin and Richard T. Wilson, which provides for a Sinking Fund of one per cent. per annum, to
166 commence in 1872, the proceeds of which the Com pany is obliged to invest in the purchase of the bonds, as long as they can be obtained for 110 or under.

When the loans made for the purpose of paying off the State debt will have been liquidated by the sale of bonds, the financial condition of the Company will be as follows:

| | | |
|---|---|---|
| 167 | Interest on $2,500,000 First Mortgage Bonds | $175,000.00 |
| | " " 278,000 Endorsed 6 per Cent. Bonds | 16,680.00 |
| | " " 811,000 Unsecured | 58,660.00 |
| | Annual charge for interest | $240,340,00 |
| | The Gross Earning for the year ending July 1, 1870, were | $1,278,863.80 |
| 168 | Deduct Operating Expenses | 716,182.12 |
| | | $562,681.68 |

Being $322,341.68 in excess of all liabilities for interest and $387,681.68 in excess of interest on amount of First Mortgage Bonds issued.

These bonds are for sale by the GALLATIN NATIONAL BANK, 36 Wall Street, New York. 169

---

COMPTROLLER'S OFFICE,

NASHVILLE, August 11, 1870.

STATEMENT.

| | | |
|---|---|---|
| Debt of East Tennessee and Virginia Railroad Company, as per statement.. | $3,835,000,00 | 180 |
| Debt of East Tennessee and Georgia Railroad Company, as per statement.. | 1,553,890.40 | |
| TOTAL AMOUNT DUE STATE July 1, 1870..... | $4,117,761.10 | |

CREDIT.

I hereby acknowledge to have received from the East Tennessee and Virginia and East Tennessee and Georgia Railroad Companies, the following number of Bonds and Coupons of the State of Tennessee, in liquidation of said debt due the State July 1, 1870, viz.: 171

| | | |
|---|---|---|
| Three thousand eight hundred and thirty-five State bonds, of $1,000 each. | $3,835,000.00 | |
| Nine thousand four hundred and twenty-five past due coupons, of $30 each... | 282,750.00 | |
| Currency Paid Fourth National Bank, New York..... | 11.10 | 172 |
| | $4,117,761.10 | |

(Signed)

ED. R. PENNEBAKER,
*Comptroller, &c.*

[Seal of State of Tenessee.]

173 The above amounts represent the entire indebtedness of the Railroads above mentioned; and have been credited with such amounts in my office.

(Signed)

ED. R. PENNEBAKER,
*Comptroller*, &c.

174

175

176

## Deposition of Joseph W. Drexel.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, et al., on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston R. R. Co., 1

*vs.*

THE MEMPHIS AND CHARLESTON R. R. Co. et al. 2

Testimony and proofs for final hearing on the part of the respondents in the above entitled suit, taken under and pursuant to the 67th Rule in Equity, as amended, before William H. De Lancey, Special Examiner, duly appointed herein. 3

52 Broadway,
NEW YORK, March 1st, 1880.

Deposition taken by consent of counsel in the above entitled suit before William H. De Lancey, Special Examiner.

(Deposition taken subject to all legal objections of both parties.)

4

Present—CHAS. H. TWEED,
Of Counsel for Defendants and Substitution Bondholders.

E. L. ANDREWS,
Of Counsel for Complainants.

5 JOSEPH W. DREXEL, a witness produced on the part of the respondents, being affirmed as a witness, testified as follows:

My name is Joseph W. Drexel; my age forty-nine; my residence New York City; no occupation; have retired from business.

1 Q. Before you retired from business, in what firms were you a partner?

A. In the firm of Drexel & Co., Phila., Drexel,
6 Winthrop & Co., of New York, until July, 1871, and of Drexel, Morgan & Co., and also Drexel, Harjes & Co., Paris; I retired from the firms of Drexel & Co., Drexel, Morgan & Co. and Drexel, Harjes & Co., Dec. 31, 1875.

2 Q. While you were a member of those firms, did they deal as bankers in the bonds of the State of Tennessee?

A. We dealt in bonds generally, and that, of course, included the bonds of Tennessee.

7 3 Q. Had your New York and Philadelphia firms representatives in the Stock Exchanges of those cities?

A. Yes.

4 Q. Were you familiar with the manner in which Tennessee bonds were dealt in on those Stock Exchanges?

A. Yes.

5 Q. Did you ever know or hear of any Tennessee bonds being bought or sold as carrying a lien
8 upon any railroad in the State of Tennessee to which they might have been loaned?

A. No.

6 Q. Did your firm of Drexel, Winthrop & Co. in or about 1870 become the purchasers of any of the substitution bonds issued by the Nashville and Decatur Railroad Company?

A. We became part purchasers to a large extent

in company with R. T. Wilson & Co., A. Iselin & Co., and the New York Guaranty and Indemnity Company of the bonds issued by the Nashville and Decatur Railroad Company at that time. The whole amount of the loan was $2,100,000, and we bought about $1,900,000.

7 Q. At the time that your firm became part purchasers of those bonds had you any knowledge of any claim of any holders of bonds issued by the State of Tennessee and loaned to the Nashville and Decatur Railroad Company, or to its predecessors, that they had any lien or claim upon the property of that Company or its predecessors?

A. No.

8 Q. Did your firm, in connection with the N. Y. Guaranty and Indemnity Co., issue the advertisement for the sale of those bonds now shown you?

A. Yes, sir, we did—a copy of which advertisement is as follows:

---

December 31, 1870.

**FINANCIAL.**

SEVEN PER CENT FIRST MORTGAGE BONDS

OF THE

NASHVILLE AND DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

This mortgage was created for the sole purpose of paying a debt due to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow to abide settlement of a claim of the United States; $300,000 have been purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence.

DREXEL, WINTHROP & CO.,
18 Wall Street.
NEW YORK GUARANTY AND INDEMNITY CO.,
52 Broadway and Exchange Court.

13 9 Q. If the holder of any of the bonds of the State of Tennessee which had been loaned to the Nashville and Decatur R. R. Co. or its predecessors had asserted any lien or claim upon the property of that Company by virtue of those bonds, would you have made the purchase?

A. No, sir.

10 Q. Would you have issued that advertisement and given the bonds the endorsement of your firm if you had known of such a lien or claim being as-
14 serted?

A. No, sir.

11 Q. Those bonds were sold by the interested firms, or by some of them, to the public, were they not?

A. Yes.

12 Q. You and the other parties sold them to the public as first mortgage bonds, secured upon the property of the Nashville and Decatur R. R. Co., as stated in the advertisement issued by your firm
15 and the N. Y. Guaranty and Indemnity Co., did you not?

A. Yes, sir.

13 Q. Did you afterwards become yourself a purchaser of any of the substitution bonds of the Memphis and Charleston R. R. Co. issued under the purchase of the State lien?

A. Personally I subsequently bought $50,000 of the first mortgage bonds of the Memphis & Charleston R. R. Co., each of which bonds bears an en-
16 dorsement to the effect that the lien previously held by the State of Tennessee against the road had been vested in trustees under an assignment from the State to be held as security for that issue of bonds.

14 Q. At what price did you buy those bonds and when?

A. To the best of my recollection at 90 to 95 and 17
subsequent to 1877.

15 Q. At the time of your purchase of those bonds had you any knowledge of any claim on the part of any holder of Tennessee State bonds loaned to that R. R. Co. or any other R. R. Co. in Tennessee that they had any lien or claim upon the property of that or any other R. R. Company by virtue of those bonds?

A. I say most emphatically, no; I would not have entertained the proposition for a moment if I 18
had known of any such claims.

16 Q. Are you still a holder of those Memphis and Charleston bonds?

A. I am.

*Cross-examination* by Mr. ANDREWS:

17 x Q. Where did you reside at the times mentioned in your direct examination?

A. For part of the time I resided in Philadelphia, 19
but during these transactions I was in New York the major part of business hours, and in the summer of 1871, I came to New York to reside permanently.

18 x Q. Did you purchase $1,600,000 of those substitution bonds without getting any legal advice as to their title?

A. I did not know them under the name of "substitution bonds," but we bought about that amount in connection with other parties of the first mort- 20
gage bonds of the Nashville & Decatur Railroad. We took all the precautions we usually did in buying bonds for ourselves, and had we felt the necessity of having any legal assistance we would have called it in. I do not recollect whether we felt any such necessity or not, or whether we took legal advice or not. In case we thought there was necessity for

21 legal advice, we handed it to our regular attorney. Mr. Robert Winthrop, of my firm, would be more likely to know than I.

19 x Q. Who brought these securities first to your notice.

A. Mr. R. T. Wilson, so far as I recollect.

20 x Q. Did you not have frequent conversations with Mr. Wilson on the subject of these securities?

A. I recollect talking with Mr. Wilson about them after the issue of the advertisement after I
22 came to New York. Mr. A. J. Drexel had more frequent conversations with Mr. Wilson previous to the purchase.

21 x Q. Did Mr. Wilson at any of the times mentioned in your direct examination exhibit to you the opinion of Judge Davies and Davis, to the effect that the Tennessee State bonds were paramount liens upon the railroads to which they were issued, or speak to you of that opinion in any way?

A. No, sir; he never did. He could not have de-
23 scribed them as first mortgage bonds had he done so.

22 x Q. Did you have any conversation with Mr. Iselin while the bonds were being sold?

A. Yes.

23 x Q. Did he exhibit or speak of that opinion to you?

A. No, sir; he did not.

24 x Q. Please produce a copy of any opinion which your firm received upon this subject?

24 A. I will if such a one ever existed, or is now in existence.

*Re-direct:*

25 Q. Did not Mr. Donaldson, as Chairman or Mr. Williams, as Secretary of the Committee of Tennessee bondholders or any Tennessee bondholders ever exhibit to you any such opinion of Davies and Davis, or any opinion to that effect. 25

A. No.

26 Q. If any claims on behalf of Tennessee State bondholders that their bonds constituted a paramount lien upon the property of the railroad company to which they were loaned had been communicated to your brother Anthony J. Drexel, or to your partner Mr. Winthrop, would they in the usual course of business have communicated that fact to you before the transaction was consummated? 26

A. Yes.

*Re-Cross:*

27 x Q. Could you not have obtained a printed copy of Davies and Davis' opinion had you sought for it? 27

A I neither knew then nor do I know now that such an opinion existed. I never heard of it till within a week

JOS. W. DREXEL.

Subscribed and affirmed before me this first day of March, A. D. 1880. 28

WILLIAM H DELANCEY,
Special Examiner.

29 I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the City of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the City of New York, by the counsel and witness aforesaid. That the said witness was duly affirmed and cautioned;
30 in the above-entitled suit and examined, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence.

Dated March 1st, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

31

32

## Deposition of G. W. Seay.

1

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the
RAILROAD COMPANY,

2

*versus*

THE
RAILROAD COMPANY.

Deposition of G. W. SEAY, witness for defendants, taken in Nashville, Tennessee, March 11th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee. 3

Taken pursuant to agreement.

Present—W. Y. C. HUMES, *for defendants.*

G. W. SEAY, being first duly sworn, deposed as follows: 4

My name is George Whorton Seay; I was fifty-two (52) years old my last birth day; I have lived in and near Nashville since May, 1866—from boy-

hood; I lived in Nashville with but one or two short intervals up to October, 1858, at which time I moved to Columbia, Tennessee; from January, 1854, as I now recollect, up to October, 1858, I was general bookkeeper of the Bank of Tennessee, at Nashville, succeeding H. L. Claiborne in 1854, and succeeded by him in October, 1858; during that period the Bank of Tennessee was the sole fiscal agent of the State of Tennessee, and all the funds of the State were or ought to have been deposited in said Bank. If the State officials had any safe or other means to keep their money secure; it was, I presume, merely a temporary place preparatory to making regular deposits in the bank; if a tax collector had money deposited in a branch bank, I suppose he would have deposited it in such branch bank temporarily at his own credit, awaiting the time when he would pay it over to the State Treasurer, accompanied by a receiving warrant from the Comptroller, but of this I have no knowledge as payments were made to the Treasurer on a receiving warrant from the Comptroller, the treasurer taking up the Comptroller's paying warrant and issuing therefor to the parties presenting same, his checks on the Bank of Tennessee; I have examined some (possibly all) the accounts kept with the railroad companies of the State which had received the State bonds; I find that I adopted a different plan, but with the same view as my predecessor. He kept his receipts from railroads as "Railroad Companies for Interest on State Bonds," and I kept the accounts with the different railroads separately. My reason for this change was on account of the frequent partial payments made by those companies, and the difficulty in stating the unpaid balances due from those companies if the account had been kept up as it had been commenced by my predecessor under the heading of "Railroad

Companies for Interest," &c. The moneys thus paid, whether to credit of the account headed "Railroad Companies for Interest," &c., or to credit of separate railroads, as kept by myself, was merely kept temporarily so until the amounts due by each railroad had been fully provided, and then passed to credit of the Treasurer of Tennessee. The keeping of the accounts by myself separately for the different railroads was not provided for the payment of any specific bonds, but for the payment of so much interest due the State by the railroad companies. The Bank of Tennessee did not keep any account of the separate and particular bonds issued any railroad company, and as an officer of the bank I did not know and was never furnished with any list of such loans made by the State to the railroad companies, but simply furnished with a list of the several amounts of interest due the State by the companies who had received the loan of bonds from the State. The bank acted in no other way towards such railroad companies than as the depositary of such companies for credit of the Treasurer of the State in the manner before stated. As fiscal agent of the State the Bank of Tennessee paid, or caused to be paid by its correspondent in New York, all the coupons from the State bonds, for whatever purpose issued, and never charged the payment of a single coupon to any railroad whatever. The interest so paid was charged to the Treasurer of the State directly by the Bank of Tennessee.

And further saith not.

G. W. SEAY.

Subscribed and sworn to before me, this March 11th, 1880.

L. W. HUMES,
*Special Examiner.*

## Deposition of B. O. White.

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee issued to the MEMPHIS & CHARLESTON R. R. Co.,

*vs.*

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

1

2

Testimony and proofs for final hearing taken on the part of the respondents in the above-entitled suit, under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein.

3

NEW YORK, March 2, 1880.

Present—Mr. TWEED for respondents.
Mr. ANDREWS, for complainants.

(Deposition taken subject to all legal objections of both parties.)

4

B. O. WHITE, a witness produced on the part of the respondents, being duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

1 Q. What is your name, residence, occupation and age?

A. B. O. White; I reside on Staten Island; am Secretary of the N. Y. Stock Exchange, and am of full age.

2 Q. Are you a member of the N. Y. Stock Exchange, and how long have you been so?

A. I am and have been for a quarter of a century.

3 Q. Are you familiar with the method of buying and selling State bonds on the Exchange, and how long have you been so familiar?

A. I am and have been ever since I was a member, and also before while I was a clerk with bankers in the street as far back as 1849.

4 Q. State if you know how Tennessee State bonds were bought and sold on the Exchange and in the New York market?

A. They are sold as "Old Tennessees," "New Tennessees," and "New Series." Before the war they were sold as "Tennessee 6's" and "Tennessee 5's." I never heard of their being sold in any other way.

5 Q. Was any Tennessee six per cent. bond or Tennessee 5 per cent. bond a good delivery for purchases made in the regular way on the New York Stock Exchange of either class of these bonds from 1852 to the outbreak of the war?

A. All I can say is the same as the answer to the last question.

6 Q. When Tennessee State bonds are bought at the New York Stock Exchange can the purchaser know for what purpose the bonds he is purchasing were issued, whether to railroads or for building the Capitol, or for the Bank of Tennessee, or for turnpikes, or for any other purpose?

A. He cannot as called and dealt in in the market.

B. O. WHITE.

Subscribed and sworn to before me, }
this 10th day of March A. D. 1880. }

WILLIAM H. DELANCEY,
*Special Examiner.*

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed I was attended at my office, No. 52 Broadway, New York City, by the counsel and witnesses aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence.

Dated March 10th, 1880.

WILLIAM H. DELANCEY,
*Special Examiner.*

## Deposition of H. L. Claiborne. 1

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the RAILROAD COMPANY, 2

*versus*

THE RAILROAD COMPANY.

Deposition of H. L. CLAIBORNE, witness for defendants, taken in Nashville, Tennessee, March 11th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee. 3

Taken pursuant to agreement.

Present, W. Y. C. HUMES, for defendants.

H. L. CLAIBORNE, being first duly sworn, deposed as follows: 4

I will be sixty-one years old in a few days; I have resided in Nashville, Tennessee, nearly all of sixty years, and reside there now; I was General Book-

keeper, acting also for several years as Assistant Cashier of the Bank of Tennessee, beginning in 1849, and continuing until 1853, when I resigned, and was afterwards (I think in 1858) elected again to the same position in the bank, and held the position until the bank was taken possession of by the Government (in April or May, 1865), except for the latter part of 1853 and the years 1854–5–6 and 7, and the early part of 1858 I held that position in the bank; the Bank of Tennessee was the fiscal agent of the State of Tennessee from the passage of the General Internal Improvement Act, in 1851–2, of the General Assembly of the State of Tennessee; the funds of the State were deposited in the Bank of Tennessee and its branches, to the credit of the Treasurer of the State; the State had no other treasury to my knowledge; I do not think that the State Treasurer or other State officials had any *proper safe* or other means provided for the safe keeping of moneys of the State; I do not know of the Treasurer of the State keeping funds in any other bank except the Bank of Tennessee, and branches of the same; it was the duty of tax collectors or any other persons having money, the revenue of the State, to pay the same to the Treasurer of the State, or into the Bank of Tennessee and branches designated by the State Treasurer, and to his credit; I know this fact as to the Bank of Tennessee and its branches, I cannot remember distinctly, after so many years, but think where there was no branch of the Bank of Tennessee, the Treasurer might have directed tax collectors to pay into other banks most convenient to the official thus paying moneys; when this was done, I think the Treasurer generally, if not always, withdrew that deposit by depositing his checks or drafts on such outside banks with the Bank of Tennessee at Nashville, and the bank

would collect and credit the Treasurer of the State with the amount so collected. All disbursements from the State Treasury were made as follows: The Comptroller of the State would issue his payable warrant on the Treasurer of the State, the Treasurer would then issue his check on the Bank of Tennessee, which bank kept an account with him, crediting him with all moneys received, and charging him with all moneys paid out on his check. As to the payment of interest of the railroad companies, under the Internal Improvement Act of the State of Tennessee, 1851-2, all railroad companies were required to pay the interest on the amount of bonds issued to them, into the Bank of Tennessee, fifteen days before the coupons of the State for interest, attached to the bonds, and due semi-annually, fell due. The Bank of Tennessee was notified by the State officials of the amount of interest due by each railroad Company, so that when the companies came to settle their interest, the bank officials would know what amount to receive from each railroad company. The interest payments received semi-annually by the Bank of Tennessee, from the several railroad companies during my official connection with the bank, were placed to the credit of an account called "Railroad Companies for Interest," and the amount was afterwards charged off and went to the credit of the Treasurer of the State, subject to his checks, like all other moneys of the State, from whatever source derived; I have heretofore examined the books of the Bank of Tennessee, and find that the interest so paid in by the railroad companies was sometimes during the term of office of another general bookkeeper of the Bank of Tennessee (Mr. Geo. W. Seay) serving as such when I was not employed at the bank, placed to credit of the railroad company paying, but no account was kept, nor attempted to be kept with or in respect of the holders of the

13 coupons of the State bonds issued to the respective railroad companies paying their interest to the State semi-annually, and no attemptwas ever made to my knowledge,and we had no data or information which would enable the bank to apply the interest so paid by the respective companies to the particular coupons of the bonds issued to the respective Companies making the payments. Two accounts of the East Tennessee and Virginia Railroad Company for interest are shown me, the accounts are correct, in
14 my handwriting, and I make them part of this deposition (marked A and B, respectively). There are receipts and bills rendered by the Bank to said Railroad Company at their respective dates, during my connection with the Bank as general bookkeeper. They are in my handwriting, and show the interest payments were made as so much interest owing by said Railroad Company to the State. The bills were rendered on that basis and receipted for accordingly. After the respective Railroad Com-
15 panies on the 15th of each June and December had so paid the amount of interest so due to the State of Tennessee by deposit in the Bank of Tennessee, the Railroad Companies had no further dealing, control or account of the interest so paid, but left the State to pay its own interest through the Bank, as its fiscal agent, to the creditors of the State. From 1849 up to the commencement of the war the State of Tennessee invariably paid promptly, as they fell due, all her obligations, and had ample
16 and readily attainable resources to do so. She never did, before the war, go to protest upon or permit to be dishonored or to remain unpaid at maturity any of her obligations, and no one thought of or contemplated the possibility of such a contingency happening so far as I know. The coupons were payable in the City of New York; the correspondent of the Bank of Tennessee in that city

was authorized by the bank to pay all coupons of 17
bonds of the State of Tennessee. The Merchants
Bank of New York was that correspondent, and
when they rendered accounts to Bank of Tennessee
would send coupons paid as vouchers of such
payment; the coupons were handed over by the
Bank of Tennessee to the State Treasurer, who
would issue his checks therefor, and his pass-book
with the bank was regularly balanced, all his checks
being handed to him when the pass-book was so
balanced, the checks being cancelled by the bank. 18
The railroad companies were the debtors to the
State for State bonds loaned them, and were re-
quired, as before stated, to pay the interest due by
them fifteen days before the coupons were payable
in New York by the State of Tennessee semi-an-
nually. As I have stated another bookkeeper of
the Bank of Tennessee (Mr. Geo. W. Seay), kept
separate accounts with the railroad companies for
interest paid by them to the State, but this course
of his amounted to the same thing, the accounts 19
were not kept so as to show the particular bonds
issued to any railroad company, or the interest on
any such particular bonds. The officials of the
Bank of Tennessee and the correspondent
Bank at New York did not and could not know the
coupons of bonds issued to any particular railroad
company; the coupons were paid indiscriminately, all
being paid as they were presented, and all being re-
turned to the treasurer of the State as received from
the bank which paid them. The Bank of Tennessee, 20
so far as I know, and I think I would have known
it, never knew the number of the bonds issued to
each particular railroad company; nor did the Bank
of Tennessee in any way act as the agent of any of
the railroad companies in paying interest for them,
on bonds issued to them, but the bank simply re-
ceived the amount of interest from the railroads as

provided by law, as before stated, fifteen days before the interest coupons fell due from the State. I know of no account kept by the Bank of Tennessee with the railroad companies except as before stated, and the bank could only officially know what amount of interest was due from any of the railroad companies by the information furnished by the State officials. The interest payments received by the bank from the various railroad companies were placed to the credit of an account called "Railroad Companies for Interest," or to the credit of the company paying, simply as a matter of convenient reference; it amounted to the same, however, as if directly carried to the credit of the State Treasurer, as all of these accounts had of necessity to appear in said Treasurer's account on the books of the bank of Tennessee when his account was balanced. The money paid was the State's money, as the State was liable for the coupons of all bonds issued by the State, whether to railroad companies or for any other purposes; as I have already stated, the bank paid as the fiscal agent of the State, and on its behalf, the interest on all the State bonds; the amount so paid was charged to the State (in the Treasurer's account) as so much paid for the account of the State. The State got credit on the books of the bank of Tennessee for all moneys paid into the bank, either by railroad companies or by other parties, and payments were made by the bank of Tennessee or by the correspondent of the bank, and all such payments were charged to the Treasurer of the State, and never charged to any of the railroad companies.

And further saith not.

H. L. CLAIBORNE.

Subscribed and sworn to before me, this March 11th, 1880.

L. W. HUMES,
*Special Examiner.*

EXHIBIT "A." 25

*To H. L. Claiborne's Deposition.*

EAST TENNESSEE & VIRGINIA R. R. Co.

WITH STATE OF TENNESSEE Dr.,

1859.

| | | | |
|---|---|---|---|
| June 15—Interest on State Bonds due | | | |
| Et prol'd..... | | 48,060 | |
| | CR., | | |
| June 11, | Currency | $2,452.90 | |
| | Less ¼ of Ex, 6.13.. | 2,446.77 | 26 |
| 13, | New York exchange | 22,645.00 | |
| | Currency $55 less ¼% Ex. $14..... | 54.86 | |
| 14 | New York exchange | 14,943.96 | |
| | Currency $3,945 less ¼% Ex..... 9.56 | 3,935.14 | |
| 15 | New York exchange | 4031.00 | |
| | Specie for Balance... | 3.27 | |
| | | 48060.00 | |

H. L. CLAIBORNE. 27

Nashville, June 15, 1857.

G. B. K. Bank of Tennessee.

Endorsed.

"Bank of Tennessee Nashville,"

"$48,060."

(Other part of Exhibit "A." on next page.)

L. W. H.
Sp'l Ex'r.

28

8

BANK OF TENNESSEE.

NASHVILLE, July 7th, 1859.

SAM'L B. CUNNINGHAM, ESQ., Prest.,
Jonesborough, T.,

*Dear Sir:*—I have yours of the 4th inst., is received. Below I give a full statement of the settlement E. T. & Va. R. R. interest, which you will find to be correct.

| | | | |
|---|---|---|---|
| June 11, Bank notes per express..... | | | $2,452 90 |
| " 13, " ..... | | $55.00 | |
| " 958 Phenix bank, N. Y. | | 12,645.00 | |
| 959 " " | | 10,000.00 | |
| | | | 22,700.00 |
| " 14, 881 Bank of Republic, N. Y..... | | 14,443.96 | |
| " 6,330 Merchant's bank N. Y. N. Y. ck.... | | 500 | |
| " McMahanlas to Bank of T..... | | 2,500 | |
| " Bank Notes..... | | 1,445 | |
| | | | 18,888.96 |
| " 15, New York Exchange of Porterfield..... | | | 4,031.00 |
| | | | 48,072.86 |
| You owed interest..... | | | 48,060.00 |
| Balance Exchange on Currency paid by you..... | | | 12.86 |

So you see the bank was correct in the settlement.

Very Respectfully yours,
H. L. CLAIBORNE,
for Cashier.

Endorsed:

"Bank of Tenn., Nashville."
"For Interest July 1, 1859."
"Entered June 30, 1859."

EXHIBIT "B." 33

*"To H. L. Claiborne's Deposition."*

THE EAST TENNESSEE & VIRGINIA R. R. Co.,
TO STATE OF TENNESSEE, DR.

| | |
|---|---|
| Interest due 1st July, on 1,602 State Bonds | $48,060.00 |
| ¼ o/o Exchange on Currency | 16.80 |
| | $48,076.80 |

34

CREDITS:

| | |
|---|---|
| American Exchange Bank | $530.95 |
| Bank of the Republic | 6,000.00 |
| Phenix Bank | 25,000.00 |
| Bank of New York | 10,000.00 |
| Bill on N. Y., $5,000 less discount $75 | 4,925.00 |
| Leaving for balance | 1,620.85 |
| | $48,076.80 |

35

Nashville, 15th June, 1860.

H. L. CLAIBORNE, G. B. K.,
Bank of Tennessee.

Endorsed:

"Rec't."
"Bank of Tenn."
"for Int. July 1, 1865."

36

## Deposition of Thomas Denny.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the MEMPHIS & CHARLESTON R. R. Co.

*vs.*

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

1

2

Testimony and proofs for final hearing on the part of the respondents in the above-entitled suit, taken under and pursuant to the 67th Rule in Equity, as amended before William H. DeLancey, Special Examiner, duly appointed herein.

3

NEW YORK, March 8, 1880.

Present—MR. CHAS. H. TWEED, *for Respondents.*
MR. E. L. ANDREWS, *for Compl't's.*

THOMAS DENNY, a witness produced on the part of the respondents herein, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

4

(Deposition taken subject to all legal objections of both parties.)

5 *Direct-examination* by Mr. TWEED:

1 Q. Please state your name, age, residence and occupation?

A. Thomas Denny; aged 46; I reside in New York City, and am a banker and broker.

2 Q. Are you a member of New York Stock Exchange?

A. I am.

3 Q. How long have you been a member of the
6 Stock Exchange?

A. Since 1858 or '59.

4 Q. Were you before that time also employed as clerk in the same business?

A. I was.

5 Q. During the period of your membership of the N. Y. Stock Exchange and your clerkship anterior thereto, have you been familiar with the manner of conducting transactions on the Exchange in Tennessee Bonds?

7 A. Yes.

6 Q. Please state how such dealings were conducted before the war, and into what classes Tennessee State Bonds were then divided?

A. They were bought and sold by open call at the Stock Exchange, and the classes into which they were divided were Tennessee 5s and Tennessee 6s.

7 Q. How were the contracts made between members of the Exchange in regard to those bonds entered into, and how were they recorded?

8 A. Contracts were made by the members between themselves orally, and such as they desired were recorded by the secretary on his books kept for that special purpose.

8 Q. Did those contracts specify the object for which the bonds dealt in were issued, or the distinctive numbers of the bonds to be delivered under the contracts?

A. The contracts did not state the object or num- 9
bers, but simply to the class, whether 6s or 5s.

9 Q. So that a person purchasing Tennessee 5s or Tennessee 6s, at the Stock Exchange, would not, at the time of making the purchase, nor until delivery was made under the contract, know the distinctive numbers of the bonds which he was to receive thereunder?

A. He would only know until delivery that he was to receive so many thousand dollars of 6s or 5s, without any other distinctive circumstances. No 10
distinction was made on account of the objects for which bonds were issued by the State.

10 Q. What change has taken place since the war in the classification at the Stock Exchange of Tennessee State Bonds?

A. Since the war the Tennessee 6s have been divided into Tennessee "olds," being the bonds issued before the war; Tennessee "new," being the bonds issued since the war, and Tennessee "new series," being the bonds issued for funding purposes. 11

11 Q. In other respects has the manner of dealing in these bonds at the Stock Exchange continued the same to the present time.

A. It continues the same except that the secretary's record is dispensed with, and in time contracts, written contracts, are exchanged between the members.

12 Q. In the oral dealings or the written contracts between the members is there any specification of the objects for which the bonds dealt in were issued 12
by the State, or the distinctive numbers of the bonds to be delivered?

A. There is not.

13 Q. So that a broker does not know until delivery is actually made what bonds of the classes "Old," "New" and "New Series" he will receive under his contract?

13 A. He knows the class, but neither numbers nor object for which the bond was issued.

14 Q. Did you ever know or hear of any contracts being made in the Exchange for the purchase or sale of Tennessee State bonds bearing any particular distinctive numbers, or issued for any particular purpose?

A. No such contracts were ever made on the Exchange.

15 Q. What proportion of the Tennessee State
14 bonds which are bought and sold in New York are bought and sold in the New York Stock Exchange?

A. According to my knowledge they were almost exclusively bought and sold at the Stock Exchange.

16 Q. Did you ever hear of any Tennessee State bond being bought or sold in or out of the Stock Exchange as carrying a lien on any railroad in Tennessee to which the bond was loaned.

15 A. I never have.

17 Q. Have you dealt extensively in Tennessee State bonds since you have been a member of the Stock Exchange?

A. I have.

THOMAS DENNY,
30 Pine street,
New York.

Subscribed and sworn to before me,
this 8th day of March, 1880.
16

WILLIAM H. DELANCEY,
*Special Examiner.*

I, WILLIAM H. DELANCEY, Special Examiner, duly 17
appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proof of both parties in the above-entitled suit in the City of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, New York City, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined, and the deposition was reduced to 18
writing and read to the witness and by him subscribed in my presence.

Dated 8th March, 1880.

WILLIAM H. DELANCEY,
*Special Examiner.*

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